MUNICIPAL ORIGINS

F. H. SPENCER

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AN ACCOUNT OF ENGLISH PRIVATE BILL LEGISLATION RELATING TO LOCAL GOVERNMENT, 1740-1835; WITH A CHAPTER ON PRIVATE BILL PROCEDURE

BY

FREDERICK H. SPENCER, LL.B.

Lecturer on Economics and the British Constitution at the City of London College;

WITH A

PREFACE

BY

SIR EDWARD CLARKE, K.C.

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PREFACE

I VERY willingly comply with the wish of my friend, Mr. Spencer, that I should write a few lines of preface to his book on "Municipal Origins," as it gives me the opportunity of commending to all students of our social and political institutions the best and most complete account that I have yet seen of the beginnings of that system of local government and administration of which England is very justly proud.

That system has not been built up according to any scheme of philosopher or statesman. In truth, it has come into existence without any scheme at all, and the later developments, intended to give it scientific completeness, are in some respects the least satisfactory of all its parts.

The large changes which took place in the eighteenth century in the character, the distribution, and the occupations of the people of this country required the erection of new authorities which should do for the community the duties of regulation and administration which were everywhere, but in very different character and degree, found to be necessary. Each locality, sometimes by the general action of its inhabitants, more often by the energetic work of a few of them, suggested its own form of administration, and, going to Parliament for authority, was allowed to try its experiment.

The struggle between the improvers and the well-contents was often bitter and prolonged, and in his second chapter the author has given, with industrious detail, the interesting history of some of these conflicts.

The battle at Woolwich between Madkins, the reformer, and Bowles, the churchwarden, is a type of these, and the sentence in which Bowles on the eve of

defeat protests against the abolition of the office of overseer of the poor may have been, and perhaps might now be, useful as a common form. "A danger attends such innovations. Such speculative reformations are too closely allied to revolutions; and we deprecate every idea which can in any way tend unnecessarily to deface the wise structure erected by antiquity."

Perhaps, however, the most interesting part of my friend's book will be found in the full account, now for the first time given, of the origin of the powers and duties of the Lord Chairman of Committees. It is clear that in the evolution of our great system of local government the peers were far more useful to the country than were their fellow-lawmakers in the Commons House. Their Committees were better constituted and more business-like in their procedure, and in the year 1800 the paid Chairmanship of Committees was established. From the beginning of each session he had the duty of presiding in all Committees on private Bills. The office was filled by a succession of men of great ability and high character, who were assisted by experienced counsel quite unbiassed by political or personal interest. It is not too much to say that to the first six occupants of this post—the Lords Walsingham, Shaftesbury, Redesdale, the Duke of Buckingham, Lords Morley and Onslow—this country owes a great debt of gratitude for the way in which private Bill legislation on local government has been rendered safe and systematic and consistent.

I strongly commend to the student the very careful account of this matter, which will be found in the third chapter of this book, and I feel sure that if he reads the chapter he will find himself compelled by its interest and usefulness to peruse the rest of the volume.

EDWARD CLARKE.

Peterhouse, Staines.
June, 1911.

AUTHOR'S PREFACE

MUCH of the material on which this book is based was collected while I was assisting Mr. and Mrs. Sidney Webb in research for their history of English Local Government. The enormous mass of local Acts passed during the period 1700-1835 represent the tentative, and chiefly unconscious approaches, of our ancestors towards the system of local government which the Victorian age produced. This legislation, the product of our peculiarly British private Bill legislation, had never before been submitted to detailed examination. Mr. Webb suggested that the results of such an examination ought to be published, and I, therefore, undertook the present work. I have gratefully to acknowledge, not only the generosity of Mr. and Mrs. Webb in allowing me to use materials collected whilst in their service—a service which was, in itself, a liberal education—but their constant and stimulating encouragement.

Whilst the book was being written I found it necessary to extend my original researches very considerably. And Chapter IV. could not have been written had I not had access to materials collected by my former colleague, Miss Mildred Sturge.

A book on such a topic cannot make a very effective appeal to the general reader, but I hope that it will not be without interest to students of our constitution, and particularly to those interested in the beginnings of our modern system of local government.

Sir Edward Clarke, with characteristic interest in the staff of an institution to which he pays interest on a small intellectual debt at a tremendously generous rate, found time in the middle of an unusually busy law term to read the book in proof and write a preface.

F. H. SPENCER.

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MUNICIPAL ORIGINS

Chapter I

INTRODUCTORY

If any contemplative person will go to one of our great libraries and stand for a moment before the ponderous mass of volumes containing the Acts of our Parliament from the beginnings of its history until to-day, he will notice a curious phenomenon. He will observe that the space occupied by legislation for the century from about 1745 to 1845 is immensely greater than that needed for any other century of our Parliamentary history. As might be expected, a single volume will contain the legislation of a whole reign, or sometimes several reigns, from the time of the Plantagenets almost until the departure of the Stuarts. From about 1700 onwards, however, the bulk of the annual output increases, until a year's legislative work begins to fill a stout volume; and, as soon as we get beyond the middle of the eighteenth century, two, or three, or even four volumes begin to be required.

The inquirer would find that by far the greater part of the tremendous bulk of legislation of this period consisted not of additions to, or amendments, or repeals of the general law of the land, but of Acts which, though observable by all citizens, related more particularly to the affairs of individuals, corporations, or companies, or to the affairs of some definitely limited locality. These Acts were known as Private, or Personal, or Local Acts, and they were the product of the process known as

Private Bill Legislation. Acts of such a kind are almost as old as Parliament itself; one of the principal features of the procedure upon them, viz., the fact that they must originate in a Petition to Parliament, or rather to one of the two Houses, is probably older than the method of initiating public legislation.

The reason why these Acts became so numerous in the second half of the eighteenth and the first half of the nineteenth centuries was that, especially when they were of local rather than personal application, they were the principal legislative manifestations of the economic transformation commonly called the Industrial Revolution. The application of power to manufacturing processes effected a comparatively rapid change in all the aspects of English life. The change in the methods of manufacture and transport consequent upon this application of power to industry was, perhaps, rather a rapid development than a revolution; but however the movement may rightly be described, its effects were ubiquitous. The centre of population was shifted; the dominant type of industrial organisation changed; the methods of agriculture and transport were rapidly revolutionised; the relative importance of various raw materials and of the trades based upon their use was reversed; the resultant of these and other changes being the rapid urbanisation of a hitherto mainly rural country.

Such far-reaching and rapid economic and social changes were bound to have their political and legislative reflection. On the political side the plainest result consisted in the extensions of the franchise and the redistribution of seats which took place during the nineteenth century. The immediate legislative result, however, was seen in an enormous increase of private Bill legislation. Harbours had to be constructed, canals to be cut, rivers to be deepened or straightened. It was necessary to improve the roads. Moreover—and this is what mainly concerns us—the new urban communities which were springing up were without any adequate form of local

government at all. The manorial courts had fallen into almost complete desuetude. Where they existed their constitutions were archaic and their powers insufficient. Nor was the parish vestry more satisfactory in form or more potent in function. Even the historic municipal corporations of the older, and now expanding towns, were degenerate and feeble, and, to a very great extent, were regarded as property-owning rather than administrative bodies. Quarter Sessions could administer certain county affairs with some efficiency, but were quite unable to provide for the growing needs of the rapidly growing urban centres. The new wine of urban industrial life could not be preserved in these musty old bottles; the mediæval wine-skins were wrong in shape, inadequate in size, and too feeble in material; and no political craftsmanship was equal to the task of constructing, from their decayed and broken remnants, vessels of a more suitable kind. A fresh start had to be made and entirely new materials used.

Thus the history of local governing institutions offers a sharp contrast to that of national political institutions. The history of the national government has been hitherto a history of development. The modern system of English local government owes little to historic development. It is not a growth: it is a creation. Outside certain municipal boroughs, and these not now, as a rule, the most important and influential of their class, the existing local governing bodies have but a short history. The Parish Council, the Rural District Council, the Urban District Council, the County Council are recently created bodies. Even the Municipal Borough is, to-day, both in constitution and powers, the creature of recent Statutes; whilst the County Borough was created within the memory of quite young men, and the Metropolitan Borough only just escapes being a twentieth century institution. The urbanisation of England, in fact, called forth an entirely new body of local institutions, which have only recently attained any

degree of symmetry and completeness. The system of local government thus erected in England is, so far, the final outcome of the efforts of our ancestors, by creating new statutory authorities, to keep pace as best they could with such of the needs of a new industrial society as had necessarily to be provided locally.

These needs appeared one after another, and in different places at different times. The parish constable could not keep order in a town. The unwilling and unpaid overseer of the poor, taking his turn of office for a year, could no longer administer the Poor Law in a rapidly growing population. When the village "street" has developed into the tortuous ill-planned ramifications of a rising manufacturing town or populous suburb lighting becomes necessary; and, soon, paving and street cleansing, and even street improvement urgently claim attention. Often for each of these functions, as its fulfilment became necessary or desirable, a new and separate authority was created. The only method of creating such authority was by Act of Parliament.

Each group, whether parish, town, or a particular coterie of individuals desiring the provision of some service, petitioned the Legislature for the creation of a body constituted according to their own political ideas and having powers suited, and indeed limited, to the satisfaction of what they deemed to be their immediate needs.

Thus we have large numbers of Local Acts creating separate Watch Boards, Lighting Boards, Paving Commissioners, Harbour or Bridge Trusts, Turnpike Road Trusts, Market Commissioners, Improvement Commissioners, Governors or Guardians of the Poor, Inclosure Commissioners and the like. As time went on, there was a tendency to provide for the exercise of several functions by means of a single authority. Paving, cleansing, lighting, watching and the care of the streets tended to become the work of one authority only in each district. But there were many cases where, in a single

parish, there existed half a dozen authorities each exercising only one of these functions. Nor did it follow that there was any coincidence in the areas over which such authorities had jurisdiction. One might govern the whole parish or less, others various different or intersecting portions of that area, and the areas of another might extend outside the parish bounds.

All these authorities were, as has already been stated, the product of that peculiar English procedure, private Bill legislation. Each application was local and peculiar. No alteration was made in the general law; and the statutes obtained gave powers to, and imposed duties upon, only the inhabitants of some limited area or upon some other class. The promoters of such legislation sought merely some exception out of, or some addition to the general law for their local benefit. There was no attempt by a statesman to create some more or less widely applicable and homogeneous system. Nor, in the earlier years of our period, could such an attempt have been expected.

Now it so happens that the development of private Bill procedure coincides, to a considerable extent, in point of time, with this welter of local legislation. And this would naturally be the case. The present work, therefore, deals not only with the hitherto largely neglected substance of the experimental local legislation of which our existing system is the outcome, but it seeks to describe the procedure necessarily followed whenever such legislation was sought.

Typical cases of the course followed in the localities affected by those seeking local Acts in the eighteenth and early nineteenth centuries will be described. It will be shown that the process of private Bill promotion did not always run smooth even in its initial stages; that inhabitants of growing urban areas did not always welcome innovation; that, then as now, men were sometimes perverse, and interests frequently powerful. Passing from local struggles over these legislative projects to

a more central arena we shall deal with private Bill procedure during our period both in the Commons and the Lords, and shall make an attempt to show how and why in this form of legislation the authority of the Lords, and especially of the Lord Chairman of Committees, tended to become paramount, and how and why the procedure developed into the modern efficient form more rapidly in the Lords than in the Commons. Subsequent chapters will deal first with the structure of the local governing bodies created by the process. In these we shall hope to show by analysis that the apparently bewildering hotch-potch of constitutional experiment can be made to yield some order; and that, consciously or unconsciously, the legislators of our period were producing constitutions almost all of which fall within a comparatively small number of classes. The functions of the bodies created will then be considered, and the powers and duties of these statutory authorities described. Considerations of space will compel us to limit our consideration of the contents of these Acts to two classes, viz., those dealing with the general urban services, and especially street services, such as paving, lighting, watching, cleansing, draining and improving, and the Poor Law; for it is out of bodies concerned with these functions that the modern system of English Local Government has been evolved. The hundreds of Inclosure Acts, even the Turnpike Trust Acts, we shall omit, as they have little relation to those urban developments with which we are concerned.

Thus we shall be occupied with a mass of political material and multitudes of precedents, long neglected, yet not infrequently useful and, it is hoped, instructive.

Chapter II

THE PROMOTION OF PRIVATE BILLS IN THE LOCALITIES TO WHICH THEY APPLIED

The information which can now be obtained about the origin of the local legislation of the eighteenth century is very incomplete. The knowledge which is available shows that projects for procuring a local Act often began with private individuals, who associated with them such influential persons as they could and worked in committees, frequently of a quite informal and almost always of an extra-constitutional character, the proceedings of which were, naturally, not reported. Sometimes the Bills originated in parish vestries. In any case, the consent and the support of the vestry were sought, often unsuccessfully, at an early stage in the process of promotion. Such an endeavour to secure beforehand the consent of the governed was, in practice, though not at law, an essential part of the promotion of a local Act. The endeavour was not merely the outcome of prudence and good sense; it was a necessity imposed by the unwritten rule of Parliament, and, more especially, of the House of Lords, though not, during our period, by the Standing Orders of either House.

"When a rate is to be imposed by an Act of Parliament, the consent of the inhabitants on whom the tax is to be levied should, if possible, be previously obtained. The best method of obtaining their sentiments is by calling a vestry meeting."[1]

[1] *Practical Instructions on the Passing of Private Bills . . . by a Parliamentary Agent*, 1827, p. 105. The writer goes on to explain that, if the inhabitants withhold their consent, Parliament will nevertheless

It is for this reason that the minutes of vestry meetings form the principal source of information on the present topic. Not infrequently, too, the Bill before being sent up to Parliament was submitted to a town's meeting, and in the local newspapers we occasionally find reports of what took place. Sometimes a correspondence in a local paper is illuminating. Pamphlets are a source of information of widely varying value. They are not infrequently the substance of the speech of some self-important, truculent, and often stupid opponent of innovation, who sees, in the local Act, the beginning of a process by which what he considers "Anglo-Saxon institutions" are to be overturned, new rates created, or existing rates increased, and paid officers multiplied.

In many of the centres for which local Acts were obtained there was no local newspaper; in many others there was a paper but no copies of it are preserved in any central institution; though the British Museum collection of eighteenth century papers is not inconsiderable. The pamphlets were only produced in the larger towns, and there often only when the contest was keen, or the vanity of the author great.[1] Moreover, few of such pamphlets have survived, and such as exist are not easily discoverable. The main source of our fragmentary

pass the Bill if convinced of its usefulness. He further states that the Commons Committees will sometimes pass Bills without evidence of such consultation, but the Lords never; and that Committees of the Lords have adjourned until the promoters have carried out the rule, which was not a Standing Order, and which may have been one of the unwritten but strictly enforced rules introduced by the Lord Chairman (see below, p. 95 *seq.*). The writer also points out that a Bill will not be passed merely because a vestry or town's meeting has approved it; for the approval of such a meeting could be obtained by a sufficiently powerful person for an inadvisable measure, or it might not truly represent the feeling of the neighbourhood. As to the existence of the rule, at least in the Lords, see also *Halcomb, On Passing Private Bills,* p. 211. He seems to narrow the rule to Paving or Improvement Bills containing borrowing powers or street-widening clauses.

[1] Pamphlets on Poor Law questions, local and national, are numerous; but they seldom throw much light on any stage of private bill proceedings. There are also numerous pamphlets on roads; but very few pamphlets indeed deal with local street or improvement Acts.

information therefore is the minutes of vestries, almost everywhere available, and too frequently neglected by local historians.

The dry details furnished by Journals of the Commons or the Lords, are of little service in throwing light on local movements, except where information from local sources is fairly substantial. In such a case the meagre entries in the Journal are of some assistance in the interpretation of locally gathered facts. Of the proceedings in Parliamentary Committees on private Bills, during our period, there is no formal record. I am informed that such records as existed were destroyed by fire when the Houses of Parliament were burnt down.

In many instances the promotion of a local Improvement Act begins in the parish vestry, and those with whom the idea of promotion originates are members of the vestry and use it from the beginning as the vehicle of promotion. Thus, to take an early example from the records of St. Martin's-in-the-Fields:—

"The Lord Carpenter of the Vestry of St. George, Hanover Square, desired that this Vestry would appoint two persons to meet and treat with them and St. James's about bringing a Bill into Parliament for paving the street."[1]

The vestry promptly nominated two persons, as requested, and asked them to propose clauses for street lighting as well as paving. Here the promotion evidently originated in the aristocratic vestryman of an aristocratic parish, who, having persuaded the body to which he belonged to apply for a local Act, successfully sought to enlist the official support of neighbouring parishes. The conduct of the St. Martin's Vestry was, however, typical of the line of action frequently pursued by vestries the composition of which varied from meeting to meeting. On February 11th they withdrew their

[1] MS. Minutes, St. Martin's-in-the-Field Vestry, Jan. 3rd, 1739.

concurrence, stating that the parish would derive little benefit from such legislation. On the 26th they reaffirmed it; and, by April 19th, the whole project was deferred until the next session of Parliament.[1] In 1757 similar joint action is again taken; a Bill is prepared; its consideration extends over more than six months; and, finally, a draft is approved by the St. Martin's Vestry as that of "a proper Bill" which would be of "great benefit and advantage to this parish";[2] but soon the churchwardens report that clauses in the Bill for consolidating the collection of the rates and creating a body of governors and guardians of the poor are likely "to create a great disturbance in the parish," and the vestry decides to stay all further progress with the measure.[3]

After an interval of nearly thirty years we find another individual seeking to induce the same vestry to promote a local Act of the most comprehensive character. Sir Robert Taylor[4] wishes them to promote a Bill, which would give proper legal sanction to the constitution of the vestry itself,[5] would deal with the Church Rate and other Church matters, besides providing new machinery for the whole Poor Law administration of the parish, the watch, the paving and other street services, and the collection of the local rates.[6] No immediate action seems to have resulted, but in four years' time the draft is reconsidered, certain new clauses, giving borrowing

[1] *Ib.*, at dates given in text.

[2] *Ib.*, May 2nd, 1757; Dec. 21st, 1757.

[3] *Ib.*, Feb. 13th, 1758.

[4] The leading architect of the day. He built the Bank of England and founded the Taylorian Institute at Oxford. His son, Michael Angelo Taylor, was chiefly responsible for perhaps the most famous of "street" local Acts: Michael Angelo Taylor's Act, which is still in operation in the metropolis.

[5] The Vestry of St. Martin's was "Select," and its constitution purported to rest on a grant contained in a Faculty of the Bishop of London. It was subsequently shown that the Bishop had no power to grant constitutions to Select Vestries, and that therefore the Select Vestry was illegal. See Webb, *The Parish and the County*, p. 196, 265-266.

[6] MS. Vestry Minutes, Jan. 7th, 1785.

powers and powers to acquire a cemetery site at a distance from the parish, are inserted, and a petition is ordered to be prepared.[1] But the course of local legislation was (and perhaps remains) far from smooth. The overseers of the poor are consulted on the Poor Law clauses, and they, seeking to fortify themselves with the counsel of their predecessors, convene a meeting of "late overseers," forty-nine in number. This solemn conclave of administrative experience pronounces a Bill for the regulation of the poor unnecessary, and the Bill is dropped for a time, to be revived in 1790 on complaints of the inhabitant householders themselves.[2]

Such wavering and inconclusive action by vestries as we have above described in the case of St. Martin's-in-the-Fields was frequent; nor, when we consider what floating bodies vestries were, how the resolution of twenty people present at one meeting might be rescinded by a completely different set of folk at the next, need we be surprised at its occurrence.[3] But, occasionally, the action of the vestry was direct and decisive. This was especially the case when a local Act obtained by a neighbouring parish had proved beneficial to that parish. Thus, the Vestry of St. Paul, Deptford, in December, 1753, records in its minutes that great difficulties are experienced in collecting the Poor's Rate, in keeping the highways and streets in cleanliness and repair, and in

[1] *Ib.*, Feb. 16th, 1789.

[2] *Ib.*, March 11th, 1789; April 3rd, 1789, etc.

[3] Other cases of inconsistency of policy are, for instance, that of Chelsea, where the Vestry resolves in August, 1811, that a local Act is necessary for certain purposes chiefly connected with rating and the administration of the Poor Law, appoints a Committee to draft the Bill and promote it, but rejects the Bill when prepared as "unnecessary and injurious."—MS. Minutes Chelsea Vestry, Aug. 29th, 1811; Jan. 21st, 1812. Similarly, at Richmond, the Vestry begins the work of agitating for a new local Act in Jan., 1825. It goes to work fairly, calling a public meeting of ratepayers, placing the proposed Bill, when drafted, in the Church Vestry for inspection, giving full notice on the church door of meetings for considering the Bill, and, finally, when this process has been continued until February, 1826, resolves that the proceedings be discontinued. Such inconsistency of policy is, however, even better exhibited in the more exciting stories of promotion given below.

collecting the sum due from those who have neglected to perform their statute duty upon the highways. They further recite that the adjacent parish of East Greenwich has obtained a local Act whereby similar difficulties have been overcome. This model Act is read and approved, and a committee is appointed to obtain a similar Act for Deptford. By April, 1755, the vestry is appointing officers under the powers of the local Act which has been obtained in the interim. The Act dealt not only with the matters outlined above, but with the whole administration of the Poor Law in the parish.[1]

Another early case in which the promotion seems to have gone quite smoothly is that of the parish of St. Bartholomew the Great. In January, 1755, the vestry resolves that an application to Parliament for an Act providing for the watching, lighting, and cleaning of the parish is necessary. By June in the same year the Act is in operation.[2] It should be noted that, at the meeting authorising the promotion of the Bill, it is stated that several inhabitants of the parish had already subscribed to the expenses of the application. The real origin of the movement in this case, as in other and possibly more important cases, is, therefore, to be found in the action of certain well-to-do inhabitants of the locality the improvement of which was desired. In the case of St. Bartholomew's they may have been vestrymen, though the character of the record seems to warrant the assumption that they were not.[3]

A similar unanimity and success attends the initial effort of the Marylebone Vestry to obtain a local Act. In April, 1755, the vestry asks a committee to "consider of the Heads of a Bill to be presented to Parliament

[1] MS. Vestry Minutes, St. Paul, Deptford, Dec. 10th, 1753; April 1st, 1755.

[2] MS. Vestry Minutes, St. Bartholomew the Great, Jan. 7th, 1755; June 5th, 1755.

[3] This Vestry promoted another Bill in 1768-9, apparently at the request of, or in concurrence with, the Improvement Trustees under the Act of 1755. *Ib.*, Dec. 7th, 1768.

for establishing a Nightly Watch, Paving, Cleansing and Enlightening the Streets, etc.," in the parish. In the vestry minutes we are able to follow the even course of this Bill fairly closely. The Bill is drawn up and approved; the committee is asked to supervise its promotion. In order that all local influence may be enlisted the churchwardens are empowered to add to the committee at their discretion. The local Member (a Knight of the Shire of Middlesex) is obtained to act as sponsor to the Bill in Parliament; and a legacy left to the vestry for some *other* purpose is ordered to be used to defray the expenses of promotion, the loan to be repaid out of the first moneys raised under the Act. In December leave is obtained to introduce the Bill into the Commons. Within three months more, the Royal Assent has been given, and the Duke of Portland, the Earl of Warwick, and the two Knights of the Shire for Middlesex are thanked "for their great pains and trouble in obtaining the Act of Parliament."[1] The process of promoting local Acts for Marylebone was not always to be so frictionless as this.[2]

Though local Acts for improving purely parochial administration such as that of the Poor Law and the collection of the rates seem, so far as we have evidence of their origin, to have originated most frequently in a parish vestry and to have been promoted under the direction of such a body, or of the parish officers, it would seem that local Improvement Acts were, in general, originated by individuals whose social position or whose business drove home to them the desirability of bringing into existence a certain degree of street civilisation. The vestry then often becomes the battle-ground of the parties. The promoters endeavour to secure the approval of the inhabitants in vestry assembled, whether these happen to consist of all ratepayers

[1] MS. Minutes, Marylebone Vestry, April 1st, 1755; Aug. 14th, 1755; Nov. 13th, 1755; Dec. 26th, 1755; March 19th, 1756, etc.

[2] See below, p. 15 *seq.*

or of some " select " coterie. In such a case the struggle which ensues in the vestry between the promoters and the opponents of legislation is sometimes exciting, vulgar, and turbulent. Or such a body of promoters may resolve to go straight to Parliament themselves without obtaining the sanction of any local body, in which case the vestry usually denounces their action as unconstitutional, even if it does not denounce them as unauthorised and upstart outsiders. Sometimes, however, the vestry sanctions and encourages an application for further powers by some authority external to itself, as an existing body of Improvement Commissioners, or a Statutory Poor Law body.

Occasionally the struggle for a local Act is only a phase of the fight between political parties; and, doubtless, if our information were fuller, if we could more frequently identify the persons prominent on vestries and in the work of local committees and statutory bodies, we should find this frequently to be the case. Thus, for instance, we learn that in 1731 there was an attempt to create, by local statute, an efficient body to administer the Poor Law in Manchester and to build and govern a workhouse. The promoters arranged that it should be a body of twenty-four persons, eight to be named by the Tories, eight by the Whigs, and eight by the Presbyterians. But the High Church Tories were, at that time, not content to come in on a footing of mere equality with Dissenters and Whigs, and, aided by the influence of the Lord of the Manor, got the Bill thrown out.[1] Another Bill, this time for incorporating Manchester as a municipal borough, in spite of a similar arrangement as to the initial representation of parties, suffered a like fate in 1763;[2] the great town being consequently kept on the footing of a country village for

[1] " History of the County Palatine of Lancaster," by Edward Baines (London, 1836). Vol. ii., p. 293.

[2] *Ib.*, ii. 306.

nearly another eighty years.[1] In another and later case it is a contest between tradesmen and gentry. "At Kingston-upon-Thames the tradesmen are stirring heaven and earth to have their town new paved and lighted, but met (*sic*) with such opposition from the gentry that the session of Parliament is over, and nothing is done."[2]

An interesting case in which conditions are reversed, the aristocracy figure as promoters, and the opponents are, in all probability, tradesmen who, however, are able to obtain a powerful aristocratic backing, is provided by the parish of Marylebone. In 1764 the vestry of St. Marylebone was an open vestry consisting of all inhabitant ratepayers.[3] The inhabitants of Marylebone then, perhaps even more than now, included many peers and "gentry." During the years preceding 1764 these notables do not often appear at the vestry meetings. Suddenly, on January 23rd, 1764, the Earl of Winchelsea and Nottingham, the Earl of Harcourt, the Earl of Oxford, the Earl of Bessborough, the Lord Foley, the Viscount Galway, the Lord Delamer,[4] and a number of Esquires appear to outshine the plain "Mr.'s" who usually compose the attendance. The meaning of the movement is plain. The only business done at the meeting beyond formal approval of minutes is, "A petition was presented in order to be laid before Parliament for consolidating the parish rates and establishing a select vestry, which, being read, the vestry adjourned."[5]

The minutes of the next meeting, held on February

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[1] Manchester was incorporated in 1838.

[2] *Middlesex Journal*, May 22nd, 1770.

[3] Or, as the Vestry phrased it, "Parishioners paying Scot and Lot."

[4] Lord Delamer was, about this time, the usual Chairman of Committees in the House of Lords, and was most active on Select Committees on Private Bills. Lord Winchelsea was also one of the small band of Peers who were active at this date on Private Bill Committees.—*Lords' Journals*, Jan. to April, 1765.

[5] MS. Minutes, Marylebone Vestry, Jan. 23rd, 1764.

1st, further enlighten us. No notables are present, and the ordinary ratepayers usually in attendance resolve that the minute quoted above is imperfect, and it is amended to read: "A motion, which was seconded, was made by Lord Foley for the vestry to agree to a petition to Parliament for consolidating the parish rates and establishing a select vestry, which petition was read, but the sense of the meeting so far as related to the establishment of a select vestry being against the petition, the above motion was withdrawn by the noble lord who made it, who, at the same time, declared he would think no more of the matter, upon which the vestry was dissolved." On the same occasion it is resolved to oppose the petition for a Bill depending in Parliament.[1] But if Lord Foley had promised to think no more of the matter, it could only have been because he had finished "thinking about" the advisability of an Act and was spending all his energies in achieving it. For, through February and March, the vestrymen are continuously occupied in measures of opposition. At the end of April their efforts have been successful, and the churchwardens and other parishioners who "so effectually opposed the late attempt made to infringe upon the rights of the parishioners paying Scot and Lot by introducing a select vestry into his parish" are thanked; and gratitude is also expressed to the Duke of Portland and "such Members of the House of Commons as were assisting in the said affair." It is significant that, at the same meeting, the vestry clerk is discharged, and at a subsequent election was not allowed again to become a candidate for the office. Possibly the matter was not finally concluded until June 21st, when not only the Duke of Portland, but the county Members of Parliament, with Lord Warkworth, the Hon. E. Sandys,[2] Lord Frederick Campbell, the Hon. Thomas Howard,

[1] *Ib.*, Feb. 1st, 1764.

[2] This may have been Lord Sandys, who, a little later, is very active in Committee work in the Lords.—*Lords' Journals, cit. supra.*

and all Members of the House of Commons are thanked again for defeating the attempt to diminish the rights of the Marylebone payer of Scot and bearer of Lot.[1]

This, however, is not the end of the story. In the autumn of 1765, the vestry, evidently conscious that the administration of the parish concerns was not beyond criticism, set a committee to work to revise the local Improvement Act, but without much substantial result.[2] The next year passes without event. But in 1767 things begin to stir again; for Marylebone is threatened with inclusion in a comprehensive local Act. In February of that year the vestry resolves that it would be inconvenient if the parish were included in a scheme for providing for the street services of the Westminster parishes. Later in the year the vestry got wind of a project for obtaining a local Act for Marylebone, in which, amongst other things, provision was again made for the establishment of a select vestry. The party, headed by Lord Foley, was evidently proceeding without either soliciting the help of the vestry or bringing the promotion officially within the vestry's cognisance, a process in which their position as peers would doubtless assist them. The vestry clerk was therefore directed to make diligent inquiry; the parish attorney[3] was set to work both to rouse the *superos*, and, so far as legal and desirable, to stir up Acheron against the promoters. In the meantime, that the defenders of popular rights might prove themselves diligent in well-doing, it was resolved

[1] It must be remembered that the Open Vestry had already, in 1755, promoted a comprehensive Local Improvement Act. They therefore showed a progressive spirit at an early date. The resistance to the abolition of government by public meeting in the form of an Open Vestry can be well understood if not justified.

[2] MS. Minutes, Marylebone Vestry, Oct. 17th, Nov. 7th, 1765; Feb. 10th, 1766. On Nov. 7th Lord Foley's servant making a complaint, it was resolved that, as the servant was not a "housekeeper," he should not be heard.

[3] *I.e.*, the solicitor usually employed by the parish, the Vestry Clerk of Marylebone not being a solicitor. Such is the influence of local custom that the Vestry Clerk of Marylebone almost alone among his London *confréres* was not a solicitor in 1902.

that "The vestry doth request the committee for the affairs of this parish to take immediately into their serious consideration the parish laws and consider how far the government of this parish may be amended by an application to Parliament, and that the committee do call in what assistance they think proper for that purpose. And that the committee be pleased to depute one of their members to make a report of the result of their animadversions thereon to the next vestry."

At the beginning of November a petition to Parliament against the Bill is approved, and the vestry clerk is instructed to retain counsel on behalf of the parish "against the intended private application to Parliament." Time increases the vigour of their opposition, and a fortnight later they split an infinitive in their resolution "to strenuously oppose a *private* application to Parliament at the expense of the parish,"[1] and appoint a committee with plenary powers to conduct the opposition and to meet for that purpose at the Queen Charlotte that very night.[2] Evidently the case for a reform of government in Marylebone was strong, for on December 11th the committee report to the vestry that a petition for the Bill had been presented signed by 226 inhabitants of the parish, whilst they had presented a petition against it signed by three times the number, and representing a much greater rateable value than the petitioners in support. Nevertheless, the House of Commons Committee had suggested that the Bill ought to be considered; and, probably finding that the opposition was based rather on the pride and prejudice of vestrymen than on the merits of the Bill, had told the opponents that the particular points of their opposition could well be met in the committee.[3]

[1] This means that, as was commonly the case, the expenses of obtaining the Act were to be payable out of the funds to be raised under the Act.

[2] MS. Minutes, Nov. 3rd, Nov. 17th, 1767.

[3] One point was "the matter of the Lying-in Hospital." The opposers were probably concerned about the charge upon the rates which followed

The Bill this time went through. The vestry resolves on December 21st to publish a "short state of the case" concerning the Bill; but, obviously, victory rested with the promoters, for no futher mention of the matter is to be found in the Vestry minutes until Easter Tuesday, when the Vestry which meets is a Select Vestry of 100 persons named in the recently passed local Act of 1768; and, unfortunately for the defenders of local government by public meeting, not one of the prominent opponents of the Act is to be found in the chosen 100, though a number of those formerly elected to the parish committee under the Act of 1755 are members of the new body.

An interesting example of the extent to which the promotion of local Acts was mixed up with personalities as well as with local politics is provided by the parish of Bethnal Green. The whole government of this parish rested on local Acts. By an Act of 1743 the parish itself was carved out of the parish of Stepney, and its general parochial affairs entrusted to an open vestry with a £15 occupiers' franchise. The administration of the Poor Law was in the hands of a Statutory Body of Directors of the Poor, and there was a Watch Board, and a Board of Street Commissioners.[1] The whole of the real power of government in the parish was gradually gathered into the hands of Joseph Merceron towards the end of the eighteenth century, and he remained, in spite of exciting intervals of conflict and a term of actual imprisonment, a true "local boss" for a period of about half a century.[2] The riot, licence, and depravity which were at once the consequence and the instrument of Merceron's rule caused the rector of the parish to take

from the birth of illegitimate and pauper children in the institution, which evidently existed in Marylebone at that time.—MS. Minutes, Dec. 11th, 1767.

[1] 16 Geo. II., c. 28; 24 Geo. II., c. 26; 29 Geo. II., c. 43; Geo. III., c. 40; 7 Geo. III., c. 105; 13 Geo. III., c. 53; 33 Geo. III., c. 38.

[2] For a vivid and deeply interesting account of Merceron's career, see Webb, *The Parish and the County*, pp. 79-90.

the field against him in 1809. An incident of this warfare was the promotion of a local Act. The rector's salary was a pittance of £130 a year, fixed by the local Act of 1743 which constituted the parish. Not only was there need that the Act should be amended so that the salary might have more relation to the responsibilities of what had become a great and densely populated urban parish, but the whole of the parish administration, divided up among separate bodies and based upon the series of local Acts cited above, needed consolidation and reform. Doubtless the aim of the rector and his fellow-promoters was, by a consolidation of the existing local Acts, and by the abolition of the turbulent open vestry easily manipulated by a boss who provided beer and bullock driving, to undermine that boss's power. Accordingly, late in 1812 a Bill was promoted without consultation with the vestry, whilst at the same time Merceron was prosecuted for fraudulently using his office as parish treasurer to manipulate assessments in favour of his tenants and friends and against his enemies. We get from the vestry minutes of the time a fairly clear insight into the manner in which Merceron attempted to use his control over the vestry to buy off those who had instituted criminal proceedings against him. In December, 1812, a vestry is convened to consider advertisements which have been published showing that there is a project on foot for obtaining the repeal of existing local Acts and the promotion of a new local Act. The vestry passes resolutions of the usual character. The idea of repealing local Acts, which repeal, they disingenuously remark, will reduce Bethnal Green to its ante-1743 position as a hamlet, "is absurd, impolitic, and unwise." Any alterations or amendments of existing legislation should proceed from the "knowledge and experience of those already governing the parish." That the vestry clerk of a neighbouring parish should be engaged to promote the proposed legislation is a matter for "surprise and indignation";

and if, under these outrageous circumstances, the Bill is introduced into Parliament, the vestry will oppose it. A committee, with Merceron at its head, is, therefore, forthwith appointed to conduct the opposition.[1] In January the little game develops. The committee has met, and has been conducting its proceedings in a quite touchingly charitable spirit. Differences in opinion as to the mode of assessment and as to the general government of the parish do unhappily exist, and even more unhappily have "provoked a spirit of litigation which is calculated to produce the most unpleasant consequences."

They had suggested therefore that six of their number should meet six of the promoters' party.[2] The meeting duly took place, but the representatives of the promoters refused to discuss "other matters" than the provisions of the Bill. What "the other matters" were is indicated by the fact that they then attempted to obtain an interview with the solicitor engaged in the promotion, but he refused to see them unless they signed a written statement that they were authorised to represent "the defendant Merceron."[3] From fuller reports of the proceedings of the committee entered at a later date[4] it appears that the promoters plainly said they would not consider matters arising out of the prosecution at all, and that the rector stayed away from the joint meeting. The vestry, whilst deploring "the unhappy spirit" shown by the promoters, and affirming that any "errors" of "any officer of the parish" were errors of judgment only, and that everything done by such an one has been done "from the purest motives," re-affirms its position of December 16th and resolves to oppose a Bill promoted without the consent of the parish, by utterly incompetent persons, who, moreover, not being interested in land, are unable to judge of the effects of a

[1] MS. Parish Vestry Minutes, Bethnal Green, Dec. 16th, 1812.

[2] *Ib.*, Jan. 14th, 1813.

[3] *Ib.*, Jan. 23rd, 1813.

[4] *Ib.*, Jan. 28th, 1813.

Bill affecting very deeply real estate in Bethnal Green. During the next few months, however, the promotion goes on. In May the Bill is read a second time in the Commons, and goes to Committee. Before the Committee the opposition is unable to maintain its righteously indignant attitude, and cannot well approach the Committee on the matter of the criminal prosecution. Consultations, between promoters, opposers, and counsel take place, and, finally, an agreed Bill containing a clause for giving the rector an adequate salary is supported by the vestry itself and carried.[1] The prosecution was eventually abandoned in Court for some reason which the rector never understood, but which may have been well known to Merceron himself.[2]

Another interesting case in which the parish vestry minutes enable us to follow local vicissitudes of private Bill promotion is that of Woolwich. The main functions of local government in Woolwich had been exercised throughout the eighteenth century by an open vestry, which, by developing suitable procedure, and devising a certain amount of committee machinery, had avoided some of the commoner dangers of government by public meeting; and had managed its business with as much efficiency as could be expected, even under the best conditions, from so crude a political organism as the open vestry.[3]

In 1806, however, a movement was set on foot for providing the parish with a more satisfactory local governing body which should take over the administration of the Poor Law hitherto supervised by the vestry in an extra-legal fashion, and should also provide the ordinary urban services of paving, lighting, watching, cleansing, and the suppression of nuisances, which the vestry had no power at all to provide in any effectual

[1] *Ib.*, May 10th, 1813.

[2] Webb, *op. cit.*, p. 85. Merceron was successfully prosecuted in 1818. But even after that he again rehabilitated himself in local esteem.

[3] Webb, p. 109-10, 117-8, etc.

way. At the head of this movement was one of those vigorous, public-spirited, and often pugnacious men, whom every town upon occasion produces, who inspire and accomplish a piece of good work; who, in larger towns, sometimes attain a reputation published outside the local limit of their efforts whilst they live, and perpetuated in some well-known local history after they die; who, in smaller towns, attain in their day a fame (not unmixed with odium) which dies with their contemporaries. The dusty records of parish vestries, the unturned yellow pages of old local newspapers, contain the record of many such. They lived actively and sometimes dangerously in their obscure circle and played no small part in the evolution of the political genius of our race. Such men were as necessary to our national development as those who figured magnificently before an applauding senate; and, if the threats of pain and ruin which such parochial leaders despised were often petty and vulgar, they were none the less real. The grocer defying his customer may well be a heroic figure. It is, therefore, not unfitting that the student who has often visualised an obscure and forgotten local politician, courageously and ably persuading his vestry, influencing his local magnates, writing by candle-light a broad sheet for his public in an office overlooking some dirty old street, and, in doing these things, helping his nation a step along the painful road of social improvement, should render his little offering to the memory of their now shadowy personalities.

The man who led the Woolwich movement was a certain J. M. Madkins. Whatever may have been his character and position, he was certainly an able and persistent advocate. Early in April, 1806, the vestry resolved that the promotion of a Bill for better regulating the parish was desirable, and resolved to meet from evening to evening in order that the details of the Bill might be discussed and approved. Evidently Madkins was ready with a Bill and had well prepared his ground;

for, after meetings on four successive evenings, the Bill was approved; a list of names was prepared from which those to be inserted in the Bill as the first body of commissioners could be chosen, and a deputation was appointed to wait on Sir William Geary, one of the Members for Kent, to obtain his support.[1] At a subsequent meeting a ballot was taken for the selection of the first body of commissioners whose names were to be inserted in the Bill. In this matter the interests of three sections of Woolwich people had to be considered, the interests of those connected with the Dockyard, the Ordnance (*i.e.*, the Arsenal, and probably the garrison), and the Town respectively; and evidently there was an agreement that, of the thirty commissioners to be inserted, each "department" should be represented by ten.[2] Of those nominated for each of the "departments," therefore, the ten receiving the highest number of votes respectively were selected.[3] So far there are no signs of opposition, but the inevitable contest begins. On June 5th, 1806, the vestry, whilst fully approving the Bill, resolves that it shall not be presented to Parliament until after Michaelmas, the session probably being too far advanced for immediate promotion. Nothing further happens until 1807, when, in March, the vestry approve of additional clauses evidently providing for the establishment of a water supply. It is now plain that opposition has been aroused. Interests are threatened, susceptibilities have been touched, and the consequences follow. Under the terms of the Bill the administration of the Poor Law was to be transferred to

[1] MS. Minutes, Woolwich Vestry, April 24th, April 28th, May 1st, 1806.

[2] Such a conception of the town as composed of several interests we have met before (see above, p. 14, as to Manchester, where the interests are conceived of as religious and political). It is worth noting that the military authorities retained special representation on the Woolwich Local Authority down to the London Government Act, 1899.

[3] The Ordnance list contained the names of several officers. Among those selected for the Town Department were the Rector, one other "Rev.," probably a Nonconformist minister, and Madkins himself. —MS. Minutes, Woolwich Vestry, May 7th, 1806.

the proposed elective statutory body of commissioners. It was also proposed, therefore, to abolish the office of overseer of the poor. Moreover, the constitution of the commissioners was to be of a very democratic order. The qualification for a vote at the election of the commissioners was to be the occupancy of premises assessed at £10 a year to the Poor's Rate, and, apparently in the Bill as drafted there was no property qualification for a seat at all. There were to be no *ex-officio* commissioners, not even the rector and churchwardens, nor, of course, as they were to disappear, the overseers. Naturally the churchwardens and overseers did not view their proposed extinction with tranquillity, and had been at work opposing the Bill. The vestry decides, though not unanimously, that it is the duty of parish officers to support the acts of the inhabitants in vestry assembled, and that the petition which had been presented against the Bill, and has evidently been engineered by the parish officers, is a "direct digression of duty" and "an insult to the inhabitants at large." No thoroughly English churchwarden or overseer was likely to take this censure meekly. The parish officers demand a poll of the ratepayers, on the acts of the vestry of this date, but are condemned after a poll lasting three days by 339 to 181 votes.[1] At a subsequent vestry the churchwardens and overseers (who severally refuse to take the chair, which, in the absence of the rector, was usually occupied by one of their number) are plainly asked if they propose to continue their opposition to the Bill. Some declare they do not, but Mr. Bowles, a churchwarden, preserves a stolid silence. If the old Kentish town had its energetic Madkins, with his initiative and positive pertinacity, so it had its silent, obstinate Bowles, whose inertia is not to be overcome, censure or no censure, poll or no poll. For every Madkins in local

[1] Vestry Minutes, April 20th, 1807. This practice of appealing from the decision of the Vestry meeting to the inhabitant ratepayers at large was very early developed at Woolwich. See Webb, *op. cit.* p. 109-10.

politics there is also a Bowles; and he serves his purpose. In the vestry meeting, however, the stolidity of Bowles is impotent against the energetic eloquence of Madkins. Thus, the vestry resolved that continued opposition was an insult to the parish, and passed a vote of thanks to Madkins for his manly conduct in the promotion of the Bill. Though Madkins could talk to the meeting—which, if he was the man we may take him to be, had been suitably "packed"—yet the obstinate Bowles was not without his weapon. Churchwardens, by laying their heads together, can construct a document with no mean skill. After receiving censure with indifference, therefore, the churchwardens had issued an appeal "To the Unbiassed Parishioners of Woolwich."[1] This, and the rejoinder to it, we may take as our examples of the leaflets produced by the local struggles concerning private Bill promotion of this type. The churchwardens' document begins in terms of inferential flattery, by informing the unbiassed parishioners that advantage was taken of their absence from the meeting of April 20th, "to asperse our characters as churchwardens." They therefore subjoin the resolutions of that date and claim that they (the churchwardens) already have "the sympathy of thinking men who have taken the trouble to investigate the motives of this packed assembly." Of the seventy-eight parishioners who signed the vestry minutes of that date, sixty-six (including four of the principal officers) belong to the dockyard, ten others belong to the artillery and only two to the town. "Most unhappily for the peace of the parish, the influence of the dockyard has, in many cases, been successful; how long the town is thus to be tormented will depend not so much on the modesty of the one set of men as on the laudable exertions of the other."

To stimulate such exertions the motives of those who formed the vestry meeting need to be laid open. The

[1] MS. Vestry Minutes, June 11th, 1807.

alleged motives of those who are promoting the local Bill are praiseworthy. "To amend the police of the extended parish, to ameliorate the condition of the poor, and to afford comfort and convenience to all ranks and conditions of our fellow parishioners was to erect a fabric which posterity must view with admiration; but, alas! the Bill in question, like most other human productions, was not without its defects. To remove these was our primary and only object." The unbiassed parishioners are then informed of these defects. First, by the Bill as drafted, any rated inhabitant might be elected a commissioner. This is almost, if not quite, unprecedented, and your Bowles demands the completest precedents. "It would militate greatly against the operation of the Bill. . . . It outraged common sense. Still it was long persisted in." But to proceed in the ascending scale of justifiable grievance: "In all parish Bills, with scarcely any exception, the rector of the parish, the churchwardens, and overseers of the poor have ever been considered as proper persons to sit as commissioners in right of their situations." So customary is such a provision that even Dissenters have not usually opposed it. The opposition of the present promoters to its inclusion is violent, so violent "that some of them scrupled not to declare, and publicly, that they would rather see the Bill lost altogether than that the rector and parish officers, as such, should hold situations as commissioners. To this infringement of decency we objected, not as it regarded ourselves, but as it regarded the principle we admired." Here, by the way, the onlooker may note that the contest is not merely between Dockyard, Ordnance, and Town, but a suspicion is raised that the never-ending English conflict between Anglican and Nonconformist arose on this question of Paving and Poor Law Bill promotion. Indeed, knowing as we do that Madkins was elected a commissioner for the town division to which the churchwardens appealed as against the dockyard, it is not

unreasonable to surmise that religious difference had a good deal to do with the omission of *ex-officio* officers by the promoters, and with the opposition which that omission aroused.

The onlooker of the present day will find his sympathies with Bowles, the churchwarden, on the next point. By the Bill as drafted, "The commissioners were restrained from giving such salaries as they might see from time to time necessary and proper to the different persons appointed by them. . . . To tie their hands in this instance bespoke a narrow suspicion of their integrity, and kept from them that honourable confidence which every parish ought to place in those men whom they delegate to represent them."

Such clauses as these left no alternative but opposition, not to the Bill generally, as was "basely and falsely asserted," but to the particular clauses. And they made good their claim to be better interpreters of the spirit and practice of the private Bill legislation of the day by stating that Lord Walsingham, Chairman of the House of Lords Committee, had, in exercising those large powers of revision which form so curious and interesting a feature of private Bill procedure, inserted the rector and churchwardens as *ex-officio commissioners*, had declared that commissioners must have "some fixed qualification by rental," and had struck out that part of the Bill by which the commissioners were restricted as to the amounts of the salaries they might pay, before the churchwardens' petition against the Bill was even prepared. Though if this were so it is a little difficult to understand why the opposition should have been directed against matters which had already been remedied.

On their next objection, too, it is probable that the opponents of the Bill will secure the sympathy of the twentieth century onlooker. The churchwardens' party objected to the division of the constituency for which the new statutory body is to be elected into three departments, so that of the thirty commissioners to be

elected, the dock "department" is to return ten, the ordnance "department" ten, and the town ten also.

"'Let Candour be seated in the Tribunal of Justice,' and will this be determined equitable or expedient? On the score of expediency and good order, how will it stand? Who will not at once see the mischiefs of the plan and the complicated evils of such a division? A perpetual system of discord will be generated by the creation of three distinct and separate interests . . . whilst the general welfare of the poor may be thrown into the background, and, of necessity, the grand object of the Bill, if not altogether annihilated, will meet with perpetual checks and impediments as the prevalence of party may prevail."

On the property basis the division is indefensible, for the Ordnance pays four times as much in rates as the Dockyard. As for the Town, "the subjugation of the parish must be the result."

The authors then make a personal defence. The proceedings of the vestry which censured them were signed, so they say, only by one person unconnected with the dockyard or ordnance, and only by ten connected with the latter. Their solicitor (who had been refused a hearing at the vestry, as a non-official interloper) had been sent merely to state the general position of the opponents to the Bill, and to explain that the alterations made by Lord Walsingham in the Bill were unknown to them. The Dockyard had been trying to score a victory over "what they call the Town," and the conduct of that department is unfavourably contrasted with that of the Ordnance. The dissolution of Parliament has given time for reflection, which they hope will be well used. They admire the "beauties" of the Bill, but will continue to expose its defects, and they criticise adversely the clauses relating to the town water supply. As for the proposed abolition of the office of overseer of the poor: "A danger attends such innovations. Such speculative reformations are too closely allied to

revolution; and we deprecate every idea which can in any way tend unecessarily to deface the wise structure erected by antiquity."

On such a note of historical conservatism ends the document which these "faithful friends and humble servants" of the parish inscribe to their fellow parishioners and submit to the unbiassed among them.

This specimen of parish polemics is followed, in the vestry minutes, by "The address of Joseph Mead Madkins to the inhabitants of Woolwich, on the subject of a late publication circulated in this town."[1]

Madkins, who, of course, cannot deny that certain alterations have been made in the Bill of Lord Walsingham, carefully avoids that topic, but proceeds to turn all the arguments *ad hominem* used by Bowles against the user, whom he also contradicts on most points of fact. He begins by resenting the use of such terms as "packed assembly," "party," and the like. The thinking portion of the community is already on his side. His opponents have not been of those who think, nor do they wish the parishioners so to be. "Your thinking for yourselves is what they cannot tolerate." He makes a great play with what he alleges to be the equivocal conduct of the churchwardens and overseers in petitioning against the Bill, and praying to be heard against it both personally and by counsel, whilst, at the same time, they were paying for its promotion out of the parish funds. As for the vestry meeting, the churchwardens analyse the composition of the seventy-eight who signed the vestry book, but say nothing of the rest of the 300 present, who, as was customary, did not stay to sign it. Bowles, who is the head and front of this opposition, could only find one supporter for his amendments at the vestry meeting. When Bowles's term of office expires (or before, if the rector turns him out of office) the parish will have peace—"all this torment will

[1] MS. Parish Vestry Minutes, Woolwich, June 11th, 1807.

cease." Bowles is maliciously endeavouring to set the various elements in the town at loggerheads. The parishioners employed in the ordnance, whom Bowles praises so fulsomely, do not attend the vestries—nor do Bowles and his kind want them to. "They would call them *more* honourable if that would keep them away." He denies that it is customary for the rector and churchwardens to be *ex-officio* commissioners. Surely a churchwarden is not degraded by having to submit to election; and one churchwarden has been elected in the recent ballot for the batch of commissioners to be inserted in the Bill. To the charge that the overseers *were* included,[1] this is not an attempt to pay a compliment to the church whilst excluding the rector and churchwardens, since overseers may be and have been Dissenters. He defends the attempt to limit salaries payable under the Act. He would be sorry to see the day when the limit which they proposed to insert was exceeded by one farthing. There is no division of interests in the parish; the interests of the dockyard and the ordnance are the same: "to buy cheap and keep down the rates." Thus the separate and equal representation of the three departments will not end in disunion and disorder. The "facts" upon which such equal representation is attacked are not facts. The rates of the ordnance do not exceed those of the dockyard by five to one. In the latter case occupiers of houses pay their own rates, a fact which Bowles does not mention, and, be it remembered, Bowles and the churchwardens have done their best to make the dockyard men pay more, since they raised the "rental"[2] of certain officials recently, by £100, at a vestry when only seven or eight parishioners were present. Finally, the parish officers should have declared their intention of opposing the Bill before they took office; and as for the revolution

[1] Apparently *ex-officio* in the *first* batch of commissioners named in the Bill.

[2] *I.e.*, the assessment.

consequent upon the abolition of the office of overseer, Lord Walsingham (who might be expected to keep his eye upon possible sources of revolution) saw nothing revolutionary in the proposal to abolish an office which would be superfluous when the Bill was passed.

Such is our specimen of the pamphleteering which went on in many of the places where the promotion of a private Bill for establishing a Street or Poor Law Authority was begun. Up and down England Bowles fought against Madkins to the bitter end, using arguments, personalities, bombast, flattery, appeal, stating clear issues or confusing them, propounding questions or begging them, persuading, recriminating, threatening, and sometimes actually fighting as circumstances, ability, temper, and temperament determined. In this case the Bill passed, though with the amendments, described above, which Lord Walsingham required. But we find, to the very last, the indomitable Bowles "registering his objections to the Bill," and having them "unanimously rejected" by the vestry.[1]

Another interesting case of the local conflict which often accompanied the promotion of an Improvement Bill is furnished by the parish of Stoke Damerel, now Devonport. In 1781 a local statutory Poor Law body had been created by a local Act for the parish. In 1813 a movement was set on foot, apparently outside the vestry itself, for repealing this Act, and replacing it by a statute which should provide not only for the administration of the Poor Law, but for the usual street services of paving, watching, lighting, cleansing, and the rest. This time the promoters, at least, as soon as the nature of their project was known and the fear of increased rates made itself felt, could only carry a minority of the open vestry with them. The opposition is seen in a contested election for churchwardens, the "disallowance" of overseer's expenditure, and, indeed, in actual

[1] Woolwich Vestry Minutes, July 10th, 1807.

violence. For, at the meeting at which the opposition to the proposed Act first takes vigorous form, we find it recorded in a resolution based on the report of the vestry clerk, "That the vestry book was forcibly and in the most outrageous manner taken from him and the records and resolutions for nearly two years torn out and defaced, and particularly the records and resolutions founded upon the present call of vestry.[1]

Passing over incidental accompaniments and personalia of this local struggle, we may notice that the majority in the open vestry dismisses a committee, which, having been appointed in the previous September, before the inrush of an opposing majority, to act in the matter of local legislation, is now engaged in promoting the new legislation. A new committee to oppose the proposed legislation is appointed. This new committee is to observe as an instruction "that this vestry wholly disapproves of any measure relative to lamping, lighting, and watching the town of Dock,[2] the enormous expense of which they deprecate and see no necessity for." Against this action there are the signed protests of the minority entered in the vestry minutes, the opposition of the majority to the proposed Act being, it is alleged, dictated by a spirit of party. Protests are also entered against a vote of thanks passed to Richard Blackmore, evidently the leader of the now dominant opposition, the resolutions proposed by him being, "as absurd in their formation as they are likely to be mischievous in their tendency"; and it is further alleged "that the party spirit now so lamentably existing in this town is, in great measure, attributable to his recent mode of conduct in the parish affairs."

The contest drags on through the summer and is renewed in the autumn. The majority pass resolutions in favour of merely amending the existing Act. They

[1] MS. Vestry Minutes, Parish of Stoke Damerel, July 24th, 1813.

[2] *I.e.*, of Plymouth Dock, now Devonport, and then part of the ancient parish of Stoke Damerel.

oppose any application for a repeal of the old Act accompanied by a new and more comprehensive Bill. The minority invariably enter protests against these resolutions.[1] But, apparently, the majority, though powerful in the vestry, are not skilled before Parliamentary Committees. Their petition for an amended Act is rejected for non-compliance with the standing orders, whilst that of the minority, supporting repeal and a re-enactment, which is to include provision for lighting and watching, is approved. The majority can therefore figure merely as opponents before the Parliamentary Committees of the Bill promoted by the minority. The committee of parishioners which reports this condition of affairs to the vestry recommends that such opposition shall be undertaken, as "the aggregate burthen of lamping, lighting, and watching . . . would be most enormous and oppressive." Moreover, most rateable property consists of leaseholds held for three lives, and the amount of the initial burden will be the same upon those properties which have but one life to run as upon those which have three—a manifest injustice. Their most striking argument, however, is this: "The population of this parish will consist principally of persons employed in H.M. Dockyard. . . . Mechanics and the labouring classes will, according to the best calculation of the committee, amount to about seven or eight in ten of the inhabitants whose employments are of that nature as to call them early to bed and early to rise, and consequently partaking in no one degree of the benefits of a measure towards which they will be called upon materially to contribute; with respect to their property it may be said in a general way that it does not consist of more than they themselves are able to protect."

The vestry approve of this report, and, having regard to the previous history of parish records in Devonport,

[1] MS. Minutes, Stoke Damerel Vestry, Oct. 10th, Nov. 14th, 1813.

in order that a document, forcible if not stylish, may be preserved for the subsequent edification of the historian, direct it to be deposited "in the iron chest in the church." They resolve that the Bill now before Parliament will be "burthensome, and highly unjust and oppressive on the mechanical and labouring part of the inhabitants, and that, therefore, it should be vigorously opposed." To these resolutions the usual protest of the minority is appended.[1]

But the bias of the Parliamentary Committees at this time was in favour of local Improvement Acts. The case for some sort of street order, even in a town inhabited mainly by labouring and mechanical people, was doubtless strong. The opponents found fighting before a Parliamentary Committee a very different matter from passing resolutions in an open vestry, and a very expensive process to boot. Thus, we find that, taking advantage of the fact that the lighting and watching clauses in the Bill are optional, and that the commissioners who are to administer the proposed Act need not exercise these powers unless they choose, and having obtained certain concessions as to the appointment of Commissioners, the vestry, on the suggestion of its committee, resolves that public harmony should be restored, and authorises its committee to join in the promotion of the Bill.[2] Not for the first or last time did proceedings before a Parliamentary Select Committee resolve local discords into harmony.

In parishes where a statutory local authority, whether for Poor Law or Improvement purposes had already been erected by local Act, we frequently find that local authority itself moving for further local legislation, either with the assent or support of an open vestry, or against its wishes, or, sometimes in competition with it. An instance of such competition occurred in the parish

[1] *Ib.*, Jan. 14th, 1814.

[2] *Ib.*, Mar. 13th, 1814.

of St. Pancras. In 1805 an Act had been obtained divesting the open vestry of all authority in Poor Law administration and transferring it to a local authority, the members of which held their seats for life and co-opted members to the vacancies caused by death.[1]

In 1817 an agitation was set going in the parish to put an end to this anti-democratic situation. The agitation emerges in the vestry in the form of a resolution declaring that the existing Act "is inimical to the true and general interests of the parish inasmuch as it contravenes the common law of the land by taking all parochial government from the hands of officers well-known and recognised by the law, and vesting all authority in the hands of those who hold their offices for life, are elected by their own body, and are responsible to none but themselves."

The vestry follows up this declaration by a series of resolutions demanding the amendment or repeal of the existing local Act, and by appointing a committee to inquire into the alleged abuses of the directors of the poor, whose constitution is denounced.[2] The vestry pursues its purpose hot foot. A draft Bill and a petition to Parliament in its favour are duly approved. But, very soon, the committee charged with the promotion have sorrowfully and indignantly to report that the Bill has been rejected chiefly owing to the "scandalous misrepresentation" of the Directors of the Poor, who evidently know how to defend themselves.[3] They also knew how to attack those who had attacked them, for, next year, the directors promote a Bill in Parliament for abolishing the open vestry and for replacing it by a "select" body like themselves. It proves useless for

[1] See 44 Geo. III., c. 47; 45 Geo. III., c. 99. For an account of how these Acts came to be passed see Webb, *The Parish and the County*, p. 207, *seq.*

[2] MS. Minutes, St. Pancras Vestry, July 30th, 1817.

[3] MS. Vestry Minutes, May 6th, 1818. The directors were led by Thomas Rhodes, great-uncle of Cecil Rhodes of South African fame, see Webb, *loc. cit.*; also *St. Pancras Vestry*, 1718-1900, by Walter Brown.

the vestry to pass resolutions condemning this action and pointing out that the last excuse for it has been removed by the passing of general legislation providing for the establishment of select vestries in all cases in which parishes desire them.[1] The directors, though defeated on a show of hands in an attempt to get the approval by the open vestry of its own abolition, can carry a poll in favour of that project, and they can also carry the Parliamentary Committee with them. The ruthless parricide is committed; the Bill becomes law; and the open vestry disappears, pushed into oblivion by its offspring.[2]

At Brighton in 1809-10 the vestry successfully intervenes to prevent an existing body of Street Improvement Commissioners obtaining a new Act without the consent, approval, and co-operation of the inhabitants. The vestry resolves, "that the commissioners . . . have no right whatever to frame any new Act for the purpose of amending the present Act or for making any alteration in the mode of regulating the taxes or other affairs relative to the town *without first calling a town's meeting and obtaining instructions* from the inhabitants so to do."[3] They further condemn the Bill already drafted, thank the parish officers for doing their duty" (*i.e.*, opposing the action of the commissioners), appoint a committee to draw up a petition against the Bill, and order the expense of advertising the foregoing proceedings to be charged by the overseers to the parish accounts. Although this action was confirmed at the next vestry meeting,[4] the vestry, as representing the general public, appears to have been conciliated; for, immediately afterwards it receives a report from its own

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[1] *I.e.*, Sturges Bourne's Act. MS. Minutes St. Pancras Vestry, Oct. 15th, 1819.

[2] *Ib.*, March 19th, 1819. 59 Geo. III., c. 39.

[3] MS. Vestry Minutes, Parish of Brighthelmstone, Dec. 13th, 1809.

[4] *Ib.*, Dec. 20th, 1809.

committee on the Bill, discusses it, adopts a high property qualification for membership of the proposed new statutory body, and not only in the ordinary way petitions Parliament in favour of the Bill, but takes advantage of its place in the personal affections of the First Gentleman of Europe to petition the Prince of Wales in aid of the legislative project it has adopted.[1]

In other cases, as, for instance, that of Kensington, in 1825, the vestry not only approves of the local commissioners applying for an amended Act, but urges them to do so, and imposes on them the work of preparing a Bill, which the vestry subsequently approves.[2] Again, at Exeter, where a Bill for amending the local Act of 1806 had been projected by a joint general committee representing the vestries of the numerous parishes of the old city, we find the vestry of St. Petrock's, in 1813, not objecting to the promotion of an amending Act by the Improvement Commissioners themselves, but merely criticising its contents, and appointing a committee to watch the progress of the Bill. And at Leeds, in 1834, the local Improvement Commissioners are requested by the open vestry to promote a Bill for supplying the town with water.[3] Thus the parish vestry often co-operated with, as well as opposed, the efforts of the statutory bodies to improve their constitutions or powers.

In some of the larger towns the project of local legislation originates, or is criticised, supported, or opposed, not in a vestry meeting, but in a specially summoned "town's meeting." This occurred, for instance, at Birmingham, and the outline of the history of the first Birmingham local Act happens to be typical and instructive. Birmingham, then an unincorporate town, obtained its first local Improvement Act in 1768. The agitation for this Lamp Act began at a meeting of

[1] *Ib.*, Jan. 24th-31st, 1810.

[2] MS. Minutes, Kensington Vestry, Aug. 7th, 1825; Jan. 29th, 1826.

[3] MS. Parish Vestry Minutes, Leeds, Jan. 30th, Nov. 13th, 1834.

inhabitants, evidently a small number of active people, held at an inn on February 7th, 1765. At this meeting the character and general provisions of the Act were discussed and determined. But the agitation thus characteristically begun by a non-official body seems to have hung fire, for it is not until December 19th, 1768, that a town's meeting is held, "at the chamber over the Cross," in order to obtain public support for the proposed measure.[1] The proposal, however, excited, as usual, considerable opposition. Its opponents organised a canvass of the inhabitants, and, as we are told that those canvassed were "only asked if they were for a perpetual tax, enslaving themselves and their posterity by a perpetual Act of Parliament," it is not surprising to find that the canvassers reported 237 inhabitants for and 1,236 against the promotion of the Bill.[2] Notwithstanding this opposition the Bill was successfully promoted and became law in 1769.

Similarly we find a town's meeting held in Sheffield in 1791 to consider a proposed Bill for reforming the

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[1] *Old and New Birmingham*, by R. K. Dent, p. 156.

[2] See Bunce, *History of Birmingham*, Vol. I., 72-3, also Dent, *sup.*, 158. Both quote the following manifesto against the Bill. The passage is in striking harmony with the resolution of the Devonport Vestry quoted above, p. 34, and it may be taken as typical of the kind of opposition which proposals for street lighting and other public improvements excited up and down the country: "The necessity for lamps does not appear to be the case from Experience of the Town having hitherto subsisted without lamps and that perhaps fewer Robberies or Accidents have happened to its inhabitants than any other Town for its size and numbers of people, which may perhaps be in Part ascribed to its want of Lamps; for, as according to the Proverb, Opportunity makes a Thief, so lamps frequently give a Villain an Opportunity of perpetrating Mischief which is prevented by Darkness, and his fear of being observed prowling about the streets with a Light; and this seems to be verified by the city of London which is Watched and Lighted at a very great expense, yet, nevertheless, Robbery and Mischief is very frequent there, for the Truth of which I appeal to the daily papers. . . ." If "the Interested or the Wealthy" desire these "convenient Improvements," let a voluntary subscription be opened and let them "not enforce Money against their Neighbours' Inclination or Abilities for Conveniency of Lighting the Affluent or Extravagant home from Taverns and Alehouses on dark nights." The writer concludes by suggesting as a substitute for lamps the improvement of personal holiness and the building of churches.

workhouse administation there.[1] The meeting disapproved of the Bill, which was dropped. In Leeds, too, in 1822, legislation being required in order that compulsory powers might be obtained for the removal of the "Middle Row of Buildings at the top of Briggate," the matter probably originating with the existing body of Improvement Commissioners,[2] is first considered by an ordinary open vestry meeting, and subsequently at another meeting at which the mayor took the chair. As the open vestry could be attended by every ratepayer, what was formally a vestry meeting could thus easily be converted into what was in fact a town's meeting, the municipal character of the meeting being signified by the presence of the mayor in the chair. This meeting resolved that the opportunity should be taken to obtain enlarged powers to include all the ordinary street services of the time. The Bill was only promoted and passed in 1824.[3] At similar meetings in 1834 the Improvement Commissioners were requested to promote a Bill for supplying the town with water.[4]

In corporate towns there was always the possibility of conflict between the corporation and the open vestry or other organisation of the inhabitants at large over the promotion of private Bills. The parish organisation afforded a means by which the inhabitants might resist an effort of the corporation by private Bill legislation to unload its responsibilities on to the general public, or take to itself the powers more suitably exercised, in

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[1] *The Substance of Mr. Ward's Speech at the Town Hall in Sheffield . . . at a meeting . . . to give assent or dissent to (sic) the Bill for the proposed new Workhouse.* (Sheffield, 1791.) The intention of the promoters was evidently to institute a "House of Industry" in Sheffield similar to that at Shrewsbury. Mr. Ward attacked this project.

[2] Under the Acts of 30 Geo. III. and 49 Geo. III.

[3] MS. Parish Vestry Minutes, Leeds, July 31st, 1822; March 23rd, 1823; Aug 27th, 1823; Feb. 26th, 1824.

[4] *Ib.*, Jan. 30th, 1834; Nov. 13th, 1834.

the opinion of the inhabitants, by a separate statutory body. On the other hand, the corporation, as a property-owning body, was sure to be interested in any application for local legislation which would involve additions to the rates, or would diminish its own influence; and the corporation was sometimes a convenient engine of opposition for individuals, actuated by purely personal considerations, to set in motion against local legislation originating or supported by a parish vestry or statutory body of Street Commissioners.

Liverpool affords us convenient illustrations of a controversy between the corporation and the open vestry representing the inhabitants at large. In Liverpool the open vestry, by devolving all detailed administration to a standing committee which reported annually to the body of inhabitants in vestry assembled, had retained some of the advantages of democratic local government, whilst avoiding the main inconveniences of government by public meeting.[1] There also existed a body of commissioners created by a local statute[2] for the purpose of building a church, and for lighting, cleaning, and watching; and it is interesting to notice that this statutory body was a real though not formal link between the open vestry and the corporation, as the mayor, recorder, and borough justices were commissioners *ex-officio*, whilst the "substantial householders," who formed the remainder of the commissioners, were nominated in the open vestry.[3] It will be noticed, however, that the Act of 21 George II. did not provide for paving, neither did the later Act; and this was probably because the corporation were, or were generally reputed to be, under an obligation to keep, at all events, some of the streets,

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[1] See Webb, *The Parish and the County*, p. 135 *seq.*

[2] 21 Geo. II., c. 24; also 26 Geo. III., c. 12.

[3] MS. Minutes Liverpool Vestry, 1774. The above may have been a cause as well as a consequence of the smooth manner in which the Corporation and the Vestry worked together; see Webb, *loc. cit.*

paved and in repair. By 1799 the corporation had determined that more extensive paving was necessary, and that it ought to be paid for out of rates to be levied for the purpose. It therefore endeavoured to obtain the necessary powers by promoting a private Bill for better paving and levelling the streets, making common sewers, and removing nuisances. The petition for the Bill, accompanied by a letter asking the parish to co-operate was communicated to the parish officers, and a special vestry was called to consider the matter. To this vestry the parish committee reported that the chairman of the committee through which the corporation was acting had pledged himself that the corporation would not proceed until the "approbation" of the parish had been received, and desired the vestry to appoint a committee to confer with the town council on the subject.

There is, however, in mankind, an innate disposition to ascribe to an ancient body greater obligations than do, in fact, rest upon it; especially when that body possesses property, the value of which suffers no diminution in the public imagination because it is not publicly known. This attribute of our common humanity was not absent from the Liverpool vestry, which resolved: "That it is the opinion of this vestry that the parishioners are not bound by law, or under any obligation to pave or keep in repair the streets, lanes, or public passages within the said town . . . but that the obligation of such pavement and repair is upon the mayor, aldermen, and burgesses, in respect of the corporate estate."

It was further resolved that if the corporation would withdraw the petition for the Bill, the vestry would appoint a committee to meet and confer with representatives of the council. In the meantime, the parish committee was to oppose the Bill, should its promotion proceed, and, if no agreement took place, the parish committee should demand that the corporation repair any street or highway that needed it, and should

prosecute the corporation if there should be default in the matter. Finally the churchwarden's parish committee and parish officers were thanked for their vigilance.[1]

This decisive, if not truculent, attitude succeeded, for whether the corporation really acquiesced in the position set out by the vestry, or whether, as is more likely, it was disinclined to promote a Bill at its own cost when opposed by the parish authority, the financial and political support of which it desired, the parish officers soon reported that no Bill had been introduced into Parliament, and that the promotion had been abandoned. But this did not end the matter. The corporation promoted a Bill again in 1801, although it was withdrawn before passing into law. In the meantime the liability of the corporation to pave and keep in repair the streets of the town was tested by the courts, and the corporation, as might have been expected, carried the day.[2]

The alleged liability of the corporation proved to be non-existent at law, and the liability therefore rested on the parish. Evidently, then, as the streets of an already great and rapidly growing part could not adequately be cared for under the existing Highways Acts, local legislation was necessary, and the corporation appears at once to have undertaken the task of obtaining it. Though it seems that the corporation in the Bill, as introduced, sought to have predominant powers in the

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[1] *Ib.*, Feb. 1st, 1799.

[2] See *Observations on a Bill introduced in the last Session of Parliament by the Corporation of Liverpool for . . . enlarging the powers of the . . . Liverpool Corporation Act, Liverpool*, 1802. The author of this pamphlet repeats the charge that the Corporation are endeavouring to transfer their obligation to pave and the consequent expenditure "from the body corporate to the landowner and inhabitant," though the power to levy the rate and expend it is to be lodged "in the body corporate, their agent and servant." After noting the decision referred to above, the writer hints that local legislation may be necessary, and devotes himself to showing the undesirability and impropriety of giving the Corporation a predominant representation on a body which will levy rates on the occupiers of property generally. As the Corporation have again introduced a measure of this kind he advocates opposition to it.

new statutory authority, the Bill seems to have been promoted finally with the assent of the vestry.[1]

There are numerous other cases of conflict between the municipality and the parish at large, upon matters of local Acts. We may quote, for instance, Barnstaple, where the local Improvement Act of 1811 was only obtained "after a lengthy and obstinate struggle between the corporation and the parishioners after being petitioned for and also opposed by petition."[2] So, again, in Newcastle, where the vestry of St. Nicholas,[3] in 1821, condemns the private Bill for erecting a new gaol, which is being promoted by the municipality. This opposition caused negotiations to be entered into between the town council and this, as well as doubtless the other parishes of the town, whereby the parish vestries got representation on the Commissioners under the proposed Act, and the power to hear rating appeals under the Act was conferred upon those Commissioners and not upon the Quarter Sessions as originally intended.[4] Leicester, in 1831, provides a case in which the parish was promoter, and found its chief opponent

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[1] MS. Vestry Minutes, Liverpool, Annual Meeting, 1803. The Liverpool Vestry not infrequently discussed questions of private Bill legislation. For instance, they resolved to apply to Parliament for power to assess *personal* property to the Poor Rate (*ib.* April 16th, 1805). The minutes of the Annual Meeting of March 31st, 1807, show that such a Bill was actually introduced into Parliament on their petition, but owing to the great opposition to its principle was withdrawn after the First Reading. It was replaced by a general Act for a similar object. The Parish Committee in 1814 wished to promote a Bill for reforming the local Poor Law administration, but were defeated in the Vestry. *Ib.*, March 1st, 1814; see also *An Address to all who are Assessed to the Poor's Rate for the Parish of Liverpool; by the Churchwardens and Parish Committee, Liverpool*, 1814. A Bill for building a new church was, however, approved then. In 1816 a Bill which would have enabled the Vestry to appoint and pay out of the Poor Rate any officials deemed necessary by the Annual Vestry was defeated in Vestry. Vestry Minutes, Aug. 6th, 1816.

[2] Gribble, *Memorials of Barnstaple*, 1830; quoted in Gardiner's *Barnstaple*, p. 3.

[3] This time it is a Select Vestry, however.

[4] MS. Vestry Minutes, St. Nicholas, Newcastle-upon-Tyne, Jan. 19th, 1821; Jan. 31st, 1822, etc.

in the corporation. "It is in this year that the inhabitants of St. Margaret's decided upon the desirability of obtaining an Act of Parliament for the better regulation of the affairs of the parish, and to prevent the best interests of the parishioners from being nullified by any junta of individuals, ministerial or otherwise. On October 6th a meeting was held, when it was decided to apply for a special Act of Parliament, and that a rate of a shilling in the pound be laid to defray the expense thereof. The Corporation, true to its tradition, opposed the Bill. At a select meeting Mr. Burbidge, the town clerk, read and condemned most of the clauses, especially those that took the authority over the overseers out of the hands of the magistrates and gave it to the vestry. Mr. Measures thought the Act had better be 'kicked out,' and Mr. C. C. Macaulay supposed the vestry would be chosen by the 'detestable mob' that met at the church once a year. A humble petition from the Corporation and magistrates was sent to Parliament against the Bill. Notwithstanding this influential attack, the Bill passed Committee and became law on March 31st, 1832."[1]

[1] *Fifty Years of Liberalism in Leicester*, by G. R. Searson, 1885, p. 27.

Chapter III

PROCEDURE IN PARLIAMENT

I.—The Commons.

The Parliament of the United Kingdom is the supreme and sovereign legislature of the Empire; and all its Acts are of equal validity. There is no distinction in the English law between fundamental and non-fundamental law, between constitutional and other law.[1] An Act of Parliament which changes the composition of the electorate or the constitution of Parliament itself is an enactment of the same nature as an Act which removes a disability from a single person, or makes some slight addition to the powers of a municipal corporation. Each is an Act of Parliament. It can be no more. It is no less. Nevertheless it has been found convenient to classify Acts of Parliament chiefly according to the comprehensiveness of their application. The present system of classification dates from 1868. Under it the Acts of each session are gathered into three groups: (1) Public General Acts; (2) Local Acts; (3) Private Acts.[2] Each series is separately numbered, and is printed in a separate volume or set of volumes.[3] The present classification is, perhaps, not quite self-explanatory. Without venturing upon definitions we may say that the Public General Acts are, as their name indicates, those Acts which are of general application, and make some addition to or change in the general law of the land. Acts which apply to England, Scotland, Ireland,

[1] See *e.g.*, Dicey, *Law of the Constitution*, p. 85.

[2] Not all private Acts are printed.

[3] Ilbert, *Legislative Methods and Forms*, pp. 26-7; Clifford, *History of Private Bill Legislation*, i., p. 269.

or Wales alone, though their application is in a sense local, are usually classified as Public General Acts.[1] Private Acts are those which deal with personal affairs. All other Acts are classed as Local Acts, and, as a rule, are concerned with the affairs of some locality. They may, however, control the business of some great trade organisation, like the London and North-Western Railway Company, or even of a group of such companies, which can scarcely be called local, except in an extended meaning of the word.

The Acts with which we shall deal are those passed between 1700 and 1835, which specially and exclusively applied to the local government of a particular place, being a county or some smaller area. Such Acts, to-day, would certainly be found in the columns of local Acts. But during the period we are considering this was not the case. Before 1798 Acts were classified as (1) Public General Acts; (2) Private Acts. Now a private Act was not judicially noticed unless specially put in evidence. It was usual, therefore, for the promoters of Acts which were of a purely local or personal application to insert a clause declaring them public Acts to be judicially noticed without being specially pleaded. All such Acts were, therefore, printed and bound up with the Public General Acts. Thus nearly, but not quite all local Acts up to 1798 are to be found in the volumes of Public General Statutes. From 1798[2] until 1868 the Acts were divided into three classes: (1) Public General Acts; (2) Local and Personal Acts declared public and to be judicially noticed; and (3) Private and Personal Acts. The Acts, therefore, with which we shall deal, if passed between 1700 and 1798, are usually, though not

[1] Most of the recent Acts applying to London are public Acts, and all recent London Acts were introduced into Parliament as public and not as private Bills. At the Committee stage they are dealt with as private Bills, and thus, together with other Bills similarly treated, are termed *hybrid Bills*. See below, p. 50, *n.*

[2] By joint resolutions of the two Houses. House of Commons Journals, vol. 52, p. 413; and see Clifford, and Ilbert, *loc. cit. sup.*

quite invariably, to be found among the Public General Statutes. If passed between 1798 and 1835 they are almost invariably to be found in the volumes of Acts Local and Personal.[1] A more important matter than the portion of the Statute Book in which an Act is to be found is whether it was introduced as a public or a private Bill;[2] for this seriously affected the procedure followed in its passage through Parliament, its cost to the promoters, and the kind, if not the degree, of trouble occasioned by its promotion. A public Bill generally has for its object some repeal, or amendment of, or addition to, the general law, and is introduced by a Member of Parliament in the public interest. A private Bill is one by which there is sought for the benefit of a particular person, group of persons, corporate body, or locality, some exception from, or privilege beyond, the general law. It is petitioned for and promoted for particular and not general public interests.[3]

[1] Thus references to Acts earlier than 1798 are to public general Acts unless the contrary is stated, *e.g.*, 16 Geo. III., c. 21, must be looked for among the Public General Statutes. References to Acts from 1798 onwards will be to Acts local and personal, *e.g.*, 5 Geo. IV., c. 16 must be looked for in the volumes of Acts Local and Personal. From 1753 onwards most public Acts of a local application were bound in a separate volume known as "Road Acts," though they continued to be numbered consecutively with the ordinary general statutes. From 1753 to 1798, therefore, most of the Acts we refer to will not be found printed in the ordinary collections of statutes, and must be looked for in the collection of Road Acts. Many important public libraries do not contain these Road Acts.

[2] In fact, the classification of the *Acts* has been held to rest merely upon whether certain fees have or have not been paid. "Whether an Act is printed in one part of the Statute book or another depends upon whether certain fees have been paid upon it or not" (Chief Baron Pollock in *Richards* v. *Easto*, 15 M. and W. 248; Hardcastle's *Construction and Effect of Statute Law*. This leaves the ultimate question unsolved. Fees are payable on private Bills; they are not payable on public Bills. This tells us nothing as to *why* one Bill was to be considered "private" and another "public," and therefore whether private Bill or public Bill procedure be adopted. Moreover, the Chief Baron's dictum was not true of our period, for up to 1798 Acts upon which private Bill fees had been paid were very frequently among the public Acts. His dictum only applied to the period 1798-1868.

[3] It is perhaps hardly necessary to point out that the distinction between a Government Bill and a private member's Bill is quite other. There are two kinds of public Bills: the one is introduced by a member

As a rule the public Bill is intended to apply either to the whole United Kingdom, or to one or more of its anciently independent portions. But any amendment of the general law must be sought by a public Bill.[1] Thus if the object of a Bill is to effect some change in or repeal of the general law it must be introduced as a public Bill, and public Bill procedure must be followed.[2] When, however, legislation is sought for the purpose of obtaining some "*privilegium*" or "*exceptio*," some special rights outside the general law or some special exemption from the general law for the benefit of a limited class, then the Bill must be introduced as a private Bill and private Bill procedure must be followed.

Broadly speaking, the differences between procedure followed with regard to public and private Bills respectively are as follows:—

(*a*) A public Bill originates with a *motion* by a Member of Parliament for leave to introduce the Bill.

A private Bill originates in the *petition* of the promoters to Parliament.

(*b*) The Member introducing the public Bill is not

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of the Government on behalf of the Government; the other is introduced by a private member, and may or may not receive the support of the Government or any member of it. For the distinction between public Bills and private Bills, and between public, local, and private Acts, see Redlich, *The Procedure of the House of Commons*, and Lowell, *The Government of England*.

[1] Public Bills, when passed, nearly always become public Acts, though they are occasionally printed as local Acts. And private Bills when passed nearly always become either local or private Acts. But before 1798 most private Acts other than inclosure, divorce, or estate Acts became public Acts. Thus, as a rule, paving, lighting, watching, and improvement Bills generally became public Acts, and so did turnpike trust Bills, river navigation Bills, canal bills, fen drainage Bills, Bills for building or repairing churches, providing for docks or harbours, or burying grounds, or water supply. But instances of such Bills becoming private Acts could be supplied. For instance, road Acts during the first decade of the eighteenth century were generally placed among the private Acts.

[2] Nevertheless, changes in the general law by means of private Bill legislation must have been pretty frequent before the supervision of private Bills became so close as it now is. For example see *infra* p. 285; and see, for examples of a later date, *Report of Select Committee* (*Commons*) *on Private Bills*, 1846; *Evidence*, especially evidence of Chadwick, p. 39 and 40; J. E. D. Bethune, p. 76; E. Rushton, p. 2.

bound to satisfy any officials that Standing Orders have been complied with before the Bill is introduced.

The promoters of a private Bill must comply with an elaborate code of Standing Orders, and must prove to officials called the Examiners of Standing Orders that they have done so before the Bill can be introduced at all.

(*c*) After the Second Reading a public Bill is usually referred either to a Committee of the Whole House or to a Grand Committee. Only in exceptional cases, and frequently when immediate legislation is not contemplated, is it referred to a Select Committee.

A private Bill is invariably referred to a Select Committee.[1]

(*d*) No fees are chargeable on public Bills.

Fees are chargeable upon private Bills and must be paid by the promoters.

Public and private Bills during the earliest years of Parliamentary history both originated in petitions to the Crown for redress of grievances. In the case of private Bills this ancient procedure has been retained, though the petition is no longer addressed to the Crown, but to one or other of the Houses of Parliament.[2] In the eighteenth century, therefore, the promoters of a private Bill had, in the first instance, to petition Parliament for leave to introduce their Bill. In the case of petitions for local legislation of the kind with which we are dealing the petition had necessarily to be presented to the House of Commons; for such Bills almost always contained some provision affecting local taxation, and therefore had to be commenced in the Commons. Thus, whilst Estate Bills, Divorce Bills, Bills for change of name and naturalisation, and other personal legislation

[1] Bills introduced as public Bills, on account of their comparative importance, but which when passed will be local Acts, are called hybrid Bills, and are usually referred to a Hybrid Committee, which is usually merely a Select Committee, though it may be a specially strong one. The procedure on such Bills is, therefore, a combination of the procedure on public Bills with that on private Bills.

[2] Local (as distinguished from private) Bills may now be introduced into the Lords without petition.

could be, and often were, begun in the Lords, Paving and Improvement Bills, Bills for improving the local administration of the Poor Law, Inclosure Bills, Highway Bills, Harbour Bills, River Navigation Bills, Bills for re-building churches or providing burial grounds, for providing markets, prisons, county halls, and other legislation of a local character had to begin in the Commons, and the right of the Lords even to amend the financial provisions of such Bills was consistently denied.[1]

Such a petition would, to-day, be deposited in the Private Bill Office,[2] and together with the printed Bill annexed to it[3] would be examined by officials[4] to see

[1] For cases in which the Commons asserted, with regard to local taxation, their privilege that measures concerning taxation must originate in the Commons, see Hatsell, iii. 100 (in this instance the Bill appears to have been a general one; it dealt with the relief of the Poor), 105 (a Bill for paving the streets and highways of Westminster, 1661), 107 (a highway Bill, 1662), 108 (a building regulation and street cleansing Bill, 1664), 123 (a turnpike Bill, 1727); also pp. 125, 126, 127, 129, *et seq.*, all cases of turnpike or street improvement Bills or similar legislation which the Commons laid aside or rejected on account either of their origin in or amendment by the House of Lords. For a general statement as to the privilege of the Commons, see *ib.*, iii. 138, and for the Standing Order of the Commons on the point see Ellis, C. T., *The Solicitor's Instructor*, p. 23. The Commons maintained their privilege down to 1847, when, it being very inconvenient that all local Bills involving charges by way of either rates, taxes, or tolls of a purely local character should be necessarily be begun in the Commons, the privilege was waived temporarily. The waiver was made permanent in certain cases in 1858; and since 1887 it is a matter of convenience and of arrangement between the Chairman of Ways and Means and the Lord Chairman of Committees as to the House in which private Bills shall be commenced. (Standing Order 79, Commons, 1887), see Clifford ii. 785, and *Second Report from the Select Committee on Private Bills*, 1847. H.C. Reports, 1847, XII.

[2] Established 1813 by Speaker Abbot (Lord Colchester, who also reorganised the system of notices, etc.) See *The Diary and Correspondence of Charles Abbot, Lord Colchester* (London, 1861), p. xxi.; also *Clifford*, ii. 789. The establishment of such an office was recommended by a Commons Committee of 1810. *Report from Select Committee on Private Bills* (H.C. Reports, 1810, II.).

[3] The printed Bill was not necessarily annexed to the petition before 1841. See *Second Report from the Select Committee on Private Business.* H.C. Reports, 1841, Sess. 2, I. The practice of annexing a printed Bill to the petition was introduced to prevent the petition being drawn up in vague and general terms.

[4] The Examiners of Petitions, whose duty it now is to examine petitions for private Bills to ascertain whether or not the Standing Orders have been complied with, were first appointed in 1847 on the recom-

whether or not the Standing Orders of Parliament with regard to private Bills had been complied with.

The Committees to which such petitions for Bills,[1] and at a later stage the Bills themselves, were referred, in the eighteenth and early nineteenth centuries bore little resemblance to the Private Bill Committee of to-day. They were not small, impartial Committees from which all vestiges of local influence have been removed, and before which the proceedings are of at least a quasi-judicial character. The promoters of every private Bill were, of course, always careful to procure the services of a Member who was willing to undertake to conduct it through the House. It was the practice for this Member to be appointed Chairman of the Committee which was charged to consider whether a Bill ought to be introduced, and he was also Chairman of the Committee to which the Bill, if ordered, was usually committed for detailed consideration, after the Second Reading. The Chairman of the Committee was not, therefore, the impartial president of a quasi-judicial Committee. He was the advocate, or at least the friendly assistant and

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mendation of the Select Committee on Private Business, 1846. The appointment of such officials was advocated both by Members of Parliament, the Speaker's Counsel, and by Parliamentary Agents. See on this point evidence of Thos. Greene, M.P., in the *Report* of the above Committee, p. 43-4; evidence of James Booth, Counsel to the Speaker, p. 65; St. George Burke, Parliamentary Agent, p. 105. The last witness stated that the cost of proving compliance with Standing Orders in the case of the S.E. Railway Bill was £10,000, and no less than 400 witnesses had to be in attendance. The substitution of a rapid and continuous examination of officials before the commencement of the Parliamentary sessions was at once a complete success. See *Third Report from Select Committee on Private Business*, 1847. (H.C. Report XII., 1847.)

[1] To take a single example of the old practice from the *House of Commons Journal*, on November 16th, 1775, a petition was presented from the inhabitants of Swansea setting forth that the streets and public passages of Swansea were "very ill paved and cleansed, and in a ruinous condition, and many disorders and irregularities are frequently committed in the streets . . . for want of being properly lighted and watched, and that the passages . . . are greatly obstructed by sheds, pent-houses, stalls, bulks, walls, pallisades and rails heretofore built against the fronts of houses, and projecting into the said streets," and praying for leave to bring in a Bill to remedy all this. The petition is referred to a Committee, who on November 20th reported, when the House ordered a Bill to be prepared and brought in.

counsellor, of the promoters. His position rather resembled that of the chairman of a municipal committee, endeavouring "to get a project through" than that of a judge considering the merits of a case.[1] In the case of Local Improvement or Poor Law Bills it is quite as probable that this system was in the public interests as that it was contrary to those interests. Be that as it may, the practice was well established by the beginning of the eighteenth century and continued, in the Commons, in spite of complaint, long into the nineteenth.[2] We may take an instance from the earliest portion of our period. On March 12th, 1701, Tregonell Luttrell, of Dunster Castle, petitioned, stating that Minehead Harbour had been constructed by his ancestor in 1616, had since been maintained by his family, and was now sadly in need of repair, and therefore praying for an Act of Parliament to enable the harbour to be renovated, as he could not afford to put it in proper condition himself. The petition was referred to a Committee of fourteen Members specially named and of "all that served" for the Counties of Somerset, Devon, and Cornwall, thus including the Luttrell who was Member for Minehead. When, on April 23rd, the Committee reported that such a Bill ought to be brought in, Mr. Luttrell is one of the three Members charged with its preparation.[3] The Member of Parliament who, following the usual

[1] Not infrequently, too, he was conciliator as between two opposed local parties, though sometimes the advocate of one such party.

[2] See, *e.g.*, *Report of Select Committee on the Constitution of Committees on Private Bills*, 1825 (H.C. Reports, 1825, V.), and see also *Report of Select Committee on Private Business*, 1831 (H.C. Reports, Vol. XXIII., 1837-8). Evidence of Mr. Chalmers, a Committee Clerk, who puts the matter thus briefly and plainly: "... The mover of the second reading is generally the Chairman of Committee; but I have certainly never found that the arguments of counsel or the evidence have shaken his opinion.—Do you think that the mover of the second reading ought to be Chairman?—I do not think he ought; he takes the chair from old custom as a matter of course; but that is a practice which ought to be discontinued, as he may generally be deemed an influenced person."

[3] *House of Commons Journal*, March 12th, April 23rd, 1701. The Bill received the Royal Assent on June 12th. *Ib.*, June 12th.

practice, was Chairman of the Committee which considered the petition for the Bill, was a member of the great west county family in whose interests it was being promoted.[1]

The Committees over which these advocates presided were large and floating bodies. The case of the Minehead Harbour Bill above referred to is typical. It consisted not only of fourteen named Members, but of "all that served" for the counties of Somerset, Devon, and Cornwall, including the Members of boroughs situated geographically within those counties. This practice of referring petitions or Bills to large Committees composed of a varying number of named Members, together with the Members of Parliament for the vicinities immediately concerned and for all the larger neighbourhood which presumably was, or might be interested in favour of or against the proposed local measure was the rule.[2]

[1] Similarly when, in 1702, the deputy-lieutenants, justices of the peace, gentlemen, freeholders, tradesmen, and other inhabitants of the county of Cardigan petition for a Bill for repairing Aberystwyth harbour and for erecting a pier there, Sir Humphrey Mackworth and Mr. Lloyd, the two knights of the shire of Cardigan, are ordered to prepare and bring in a Bill for that purpose (*H.C. Journals* Nov. 3rd, 1702). The practice was fully recognised by the Parliamentary Agents: "The member who is to have care of the Bill in the House is generally appointed Chairman of the Committee" (*The Solicitor's Instructor*, by C. T. Ellis, ed. 1802). This appears to have applied both to the Committees to which petitions for Bills were referred and to the Committees to which the Bills were sent after the Second Reading.

[2] Thus a petition for a Bill for constructing a harbour at Tor Bay was referred to a Committee consisting of several named members, together with "all members of the House concerned in the Royal Navy, and all that serve for the counties of Cornwall, Devon, and Somerset, and for maritime towns" (*H.C. Journal*, Dec. 21st, 1705). And petitions for private Bills of all kinds, except, as a rule, those relating to estates, inclosures, naturalisation, and changes of name, are referred to Committees of similar composition. Thus, to take a few examples at random, opening the *Journal of the House of Commons* for the year 1765 we find the petition of the trustees of the road from Wallingford to Wantage, etc., referred to a Committee of 29 named members, together with all members serving for the counties of Berks, Oxford, Hants, Wilts, Bucks, and Gloucester (Jan. 11th); a petition for a Bill to establish a Small Debt Court for Blackheath, Bromley, and Beckenham, referred to a Committee of 37 named members, together with all serving for Kent, Essex, Sussex, Surrey, and the Cinque Ports (Jan. 16th); a petition for a Bill for rebuilding the Church of All Hallows on the Wall, in the City of London,

Substantially, therefore, the practice throughout the eighteenth century seems to have been that described by the Select Committee of the Commons in 1825: "Under the present system each Bill is committed to the Member who is charged with its management and such other Members as he may choose to name in the House[1] and the Members serving for a particular county (usually the county immediately connected with the object of the Bill) and the adjoining counties."[2] The Committees, whether on petitions or Bills, were constituted in exactly the same way. Such Committees, therefore, were very large, varying in number according to the locality affected by the Bill, and thus, according to the number of Members for the county or counties directly concerned and for the adjacent counties, from sixty or seventy up to as many as 200.[3] From this

referred to a Committee of 54 named members, and all serving for the City of London, Middlesex, Essex, Surrey, Hertford, Kent, and Sussex (Jan. 25th); a petition for leave to introduce a Fen Drainage Bill (Bourne, etc.), referred to 47 named members and all serving for the counties of Lincoln, York, Nottingham, and Northampton (Feb. 5th); a petition for a Bill authorising a change of surname, referred to a Committee of some 40 named members, together with all serving for Kent and Surrey (Feb. 7th, 1765); petition for a Road Bill (Carmarthen), referred to some 40 named persons, together with all serving for the counties of Gloucester, Somerset, Devon, Cornwall, and for the Principality of Wales (Feb. 12th); finally, a petition for an Improvement Bill for Manchester is referred to 33 named members and all serving for the counties of Lancaster, Westmoreland, Cumberland, Northumberland, Durham, York, and Chester. In the case of Inclosure Bills and Naturalisation Bills, and Bills for changing names (in spite of the exception quoted above), leave to introduce was often given, and without the *petition* being referred to a Committee for a preliminary examination of the truth of its allegations and the necessity for such a Bill. To put the matter in modern phraseology, the preamble was taken as proved. Whether or not a petition was referred to a Select Committee or whether leave to bring in a Bill should be given at once was a matter of usage, except that by Standing Order (July 4th, 1822) petitions for Bills for the sole purpose of extending the term of a Turnpike Trust or for consolidating two or more Trusts into one were not to be referred to such Committees, but the Bills at once introduced. By usage the same practice was followed with regard to Bills merely for the inclosure of lands (Halcomb, *On Passing Private Bills*, p. 46).

[1] Hence the named members in the examples quoted above.

[2] *Report of Select Committee (Commons) on the Constitution of Committees on Private Bills* (H.C. Reports, 1825, V.).

[3] *Ib.*, About the year 1800 these large Committee panels were regularised. The Speaker drew up lists, constituted in the manner

several results might follow. The Bill might be unopposed. The Parliamentary agent had then to secure that the Committee should sit.[1] Strictly speaking, he had to secure that eight members should be present, but this number was seldom insisted upon in the case of unopposed Bills;[2] and what happened in 1838, and doubtless between 1700 and 1835 also, was that only

described in the text above, and a Bill concerning any particular place or places was referred to the appropriate "list." The lists were termed "The Speaker's Lists," and apparently remained in 1825, as they had been constituted "about 25 years ago." We have a contemporary description which shows that the institution of these "Speaker's Lists" made little substantial difference to the system in vogue throughout the eighteenth century: "Select Committees on petitions and Bills generally consist of about thirty members particularly named in the order of reference and of all the members serving for the county where the petition originates, and of about ten of the adjoining counties, which include all the members serving for the cities, towns, and boroughs in those counties, sometimes all the members of the long robe, all the members for the maritime counties, all the members north of the Trent, or all the members of the Principality of Wales, according to the subject matter of the petition, are included in the Committee" . . . (Bramwell, *Proceedings on Passing Bills*, Lond., 1809, p. 26). The author states that the member introducing the Bill usually named the non-territorial portion of the Committee, though any other member might add names. See also Halcomb, p. 50. The recommendation of the Committee of 1825, which was adopted, was not very sweeping. From that time onwards the Commons Committees consisted of the member in charge of the Bill, the members for the county and for places within the county to which the Bill applied, and as many members for adjoining counties and places within them as made up 60. To these 60 other members chosen indiscriminately from all parts of the kingdom were added, making approximately 120 members. Such Committee lists were henceforward known as "The Speaker's Lists" (*First Report from the Select Committee on Private Business*, 1839. H.C. Reports, 1839, XIII.). It may here be noted, too, that in strict constitutional theory no member who voted against the second reading of a Bill ought to have been appointed on the Committee on the Bill. See Bramwell, who, p. 50, quotes Halawell thus: "But he that speaketh directly against the body of the Bill may not be named a Committee, for he that would totally destroy would not amend." This principle could certainly not be acted upon if Committees were constituted from the Speaker's Lists in the older or the revised form. Still less could it apply to Committees of the whole House on public Bills.

[1] It should be remembered that before 1810 the agent was very often a Clerk of one of the Houses of Parliament, a fact which explains a good deal. "On the day fixed for the Committee request a member or two to attend it" (Ellis, *Solicitor's Instructor*, p. 20).

[2] See Ellis, p. 23. The quorum of a Commons Committee was reduced from eight to five as a consequence of the recommendations contained in the *First Report of the Select Committee on Private Business*, 1824 (*q.v.* H.C. Reports, 1825, Vol. VI.).

one Member attended. The procedure on such an occasion is best described by an extract from the evidence of Chalmers, the Committee Clerk of the House of Commons already referred to:[1] ". . . Upon unopposed Bills the attendance there is really very bad; an unopposed Bill is generally attended by only one Member; the whole proceeding is almost formal; the agent having previously submitted the Bill to the Chairman of Committees in the other House, and his counsel,[2] he generally tells the Member that everything is right, that he need not give himself the trouble of looking into the clauses, he need only sign the Bill and put his initials to the clauses, and in the course of five minutes a Bill of considerable length is disposed in that way, though the House has entrusted it to the Committee to look narrowly into the matter." Thus unopposed private Bills might not really be scrutinised in the Commons at any stage.

On an opposed Bill things happened differently. In order clearly to appreciate the course which affairs might take it is well to remember that during practically the whole of the period we are considering the course of proceedings was as follows: The promoters petitioned for leave to introduce a Bill. This petition was referred to one of the large Committees above described, that they might determine whether the contents of the petition were well founded and constituted a case for the introduction of a Bill. This Committee usually examined one or two witnesses who testified to the case as set out in the petition, and their evidence was, as a rule, supported by one of the members of the Committee, usually no doubt the Member in charge of the Bill. The Committee could also examine whether such Standing Orders as applied to the Bill in question had been complied with, though apparently this matter

[1] *Loc. cit. sup.*, p. 53, *n.*

[2] The necessity of previous consultation with the Lord Chairman of Committees is dealt with below, p. 101 *seq.*

frequently arose, if at all, not in the Committee on the petition, but in the subsequent Committee on the Bill. The Committee on the petition being satisfied that there was a case for the Bill—or, as we should now say that the preamble[1] was proved—reported their opinion to the House, the report taking the form of a brief summary of the proceedings in the Committee.[2] The House thereupon ordered that a Bill should be brought in; and named two (or sometimes three or even four) Members to prepare such a Bill. A few days later the Bill so prepared was brought in and, as a rule, read a first time without opposition.[3] The Second Reading was thereupon ordered. After another short interval the Bill was read a second time, usually also without opposition; and it was then, as a rule, committed to a large Committee,[4] which, though not composed of the same Members as the Committee on the petition, was of a similar size and structure. It will be seen, therefore,

[1] The petition is now, in fact, the preamble to a printed Bill. In the eighteenth century the petition, though in the first instance it may have had no Bill annexed to it, usually appeared in the Statute Book as the preamble of the Act; presuming, that is, that the Bill passed.

[2] These reports were, during the greater part of the eighteenth century, always printed in the *Journals* of the House, though the proceedings of a Committee of the whole House, whether on a public or private Bill, was not usually printed. Occasionally the reports of such Committees on petitions for private Bills are lengthy documents; *e.g.*, on Feb. 27th, 1765, a report on the petition for the Minehead Roads Bill occupies four pages of the *Journals*. But the length of these reports gradually diminishes, and from about 1780 the entry is merely a formal one to the effect that a report was made, a Bill approved, and therefore ordered by the House.

[3] But in rare cases leave to introduce the first reading was only obtained after a division, *e.g.*, Newton Abbot Roads Bill, Feb. 7th, 1765.

[4] Thus the history in the Commons of the first Cleansing, Lighting, and Watching Act for Manchester and Salford is, in outline, as follows: Feb. 12th, 1765, petition heard and referred to a Committee. Feb. 19th, 1765, Lord Strange reports that the allegations of the petition have been proved; Lord Strange, Mr. Shuttleworth, and Mr. Reynolds accordingly ordered to prepare and bring in a Bill. Feb. 20th, Lord Grey added to those entrusted with the preparation of the Bill. March 5th, Lord Strange presents the Bill as ordered; read a first time; ordered to be read a second time. March 12th, read a second time and referred to a Committee. March 22nd, Bill as amended in the Committee reported; amendments agreed to by the House; Bill ordered to be ingrossed.

that before a Committee of the Commons there were two separate occasions on which the Bill had to be supported by legitimate or illegitimate means and two opportunities for opposing the Bill, not only by argument, evidence, and cross-examination of witnesses, but by the manipulation of a large and floating body of Members. If the Bill though opposed did not arouse much interest, what had first to be secured at both Committee stages was the attendance of a quorum of Members.[1] The solicitor in charge of the Bill, if wise, therefore made it his business to stir up some of the appointed Members of the Committee to attend, lest what was the business of so many should be neglected by all.[2] If the solicitor had omitted this precaution, or his efforts proved successful, the resources of Parliamentary ingenuity were not exhausted. Provided the Member in charge of the Bill was present, the Committee Clerk frequently put down the names of a sufficient number of other Members of the Committee as present, though in fact they were not present, and the petition was solemnly reported to the House as having been examined.[3] But if the Bill were sufficiently exciting or

[1] "There should be eight members to form a Committee, but the number is not rigidly observed."—*The Solicitor's Instructor*, by C. T. Ellis, 1799, p. 20. At p. 40, however, the author seems to be of opinion that it is only in the case of unopposed Bills that the Standing Order to this effect was not observed.

[2] "On the day fixed for the Committee request a Member or two to attend it."—*Solicitor's Instructor*, p. 20.

[3] See Sherwood, Thos. M., *Proceedings on Private Bills*, 1829, p. 6, quoted by Clifford, ii., p. 792; and see Clifford, ii., p. 792*n*., for an instance of a complaint by a member that his name had been used in this way, although he was in fact opposed to the Bill. The Speaker issued an order forbidding the practice; and the order is stated to have acted "as a serious obstruction to business." Nevertheless, in 1836, Halcomb could write, with reference to the Standing Order fixing the quorum for a Select Committee at five: "It is most usual to depart from the strict observance of this Standing Order . . . for the usage has long been that the member who presented the petition alone attends with the Committee Clerk; and the latter selects from the printed lists the names of any other four members who are not present and then enters them on his minutes as present." After referring to the incident of 1828 and the order of the Speaker thereon, he continues: ". . . But the inconvenience attending a strict compliance with this Order was found to be

important a quorum was, doubtless, easily obtainable. In this case the party against whom the Committee, whether on the petition or the Bill, seemed likely to decide, used, if they could, non-attending Members of the Committee as an engine for destroying the work of its regularly attending Members.[1] The House of Commons Committee of 1825 sets out as an admitted grievance " that protracted and expensive investigations have been attended solely by Members whose constituents were locally interested in the results, or in some cases by Members who have themselves had an individual interest on the subject of Bills; while it has not infrequently happened that the final decision on the clauses and on the reports have, at the very close of Committees, been settled by numerous other Members, who, from their absence, have been ignorant of the information obtained during earlier stages of the proceedings."[2]

There seems to be no doubt that proceedings were lengthened deliberately, in order both to secure that only Members interested for or against the Bill, either directly or through their constituents, should attend, or that the proceedings should be made so costly as to terminate either promotion or opposition; and that if these methods failed those Members entitled to come to the Committee but who had not attended would be

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such that the practice has again relapsed into its former irregularity."—*Halcomb*, p. 53. So that Committees on Petitions, at least, were, in 1836, again an empty form.

[1] " When any opposition is expected, in order to defeat that opposition procure the attendance of as many members as you can in every stage of the Bill."—*Solicitor's Instructor*, p. 34.

[2] H.C. Reports, 1825, VI. Nevertheless the House of Commons had refused in the previous year to stop the practice. The Select Committee on Private Business of 1824 recommended that the Committee Clerk should keep an Attendance Book, and that no Member should be allowed to vote unless he signed the book within an hour of the time appointed for the meeting of the Committee.—H.C. Reports, 1824, VI. This recommendation was not adopted. Doubtless it would have been an imperfect remedy.

whipped up at the last minute to vote for or against a measure which they had not considered.[1]

The possibility of this last proceeding was enlarged by the practice of ordering "voices." The Committee of 1825 describe this procedure as plainly as it can be described:—

"If in the case of a projected canal, or a road passing through two or three counties, the friends of the Bill discover that among the Members serving for the Division of Counties to which the Bill is committed a majority are likely to support it, they rest satisfied with the constitution of the Committee, but the same reason produces a very different feeling in the opponents of the measure who never fail to procure come Member to open the Committee by moving in the House '*all who come shall have voices*'; a step justifiable and, perhaps, indispensable on their part, but which far from diminishing the evil, not infrequently augments it tenfold, by inviting all the interested parties in the House to take part in the business of the Committee, which necessarily terminates in the prevalence of the strongest party; for they who have no interest of their own to serve will not

[1] This practice lasted until, in 1847, the House of Commons Committees were reduced (as those of the Lords had been in 1837) to a small Committee of five, recognising the judicial, as well as the legislative nature of their functions, *e.g.*, in 1838, St. George Burke, a well-known Parliamentary agent of the day, speaking of the size of the Commons Committees, said: "It is a source of the greatest inconvenience to the solicitors in charge of the Bill; they are in constant alarm if their case is opposed, lest they should be tripped up in any proceeding when they have not a majority of their friends in the room. The consequence is that instead of being able to apply their whole attention to the conduct of the case, they are travelling about for members everywhere, and the inquiry has more the appearance of a contest which is to be decided by the number of friends on one side or the other side than one to be decided by the merits of the case itself." And in further examination he stated that it was undoubtedly the practice of agents to collect as many Members for the Division as they could, regardless of whether or not they had heard the evidence.—*Report from the Select Committee on Private Business.* H.C. Reports, 1837-8, XXIII., Evidence, p. 3. See also Evidence of J. B. Hayward, p. 17. Hayward stated that Members sometimes gave or withheld their votes from corrupt motives, getting high prices for property to be acquired as a condition of support, *ib.*, p. 19. Canvassing members of the Committee seems to have been a recognised practice. See Evidence of John Richardson, *ib.*, as to this.

be prevailed upon to take part in the struggle in which their unbiassed judgment can have no effect."

Manipulation of the membership of the Private Bill Committees, therefore, was in full swing, probably, during the whole of our period. The practice arose directly out of the manner in which those Committees were constituted, and was in some cases much assisted by the practice of ordering that all Members who chose to attend the Committee might do so and might vote.[1]

There was a further danger against which the experienced agent was compelled to guard. If at any time those Members opposed to the private Bill found themselves in a majority they could, by adjourning

[1] "Thus 'voices' were ordered in the case of the Southwark to Dartford Road Bill" (*H.C. Journals*, Feb. 7th, 1765). Perhaps a similar motive underlay the fact that the Westminster Paving Bill of 1765 was referred to a Committee of the whole House after an attempt to reject altogether the motion for its committal. In this case the opposition was that of the road trustees on the South side of the river, who feared that the imposition of "Sunday tolls" for the benefit of the Westminster Paving Trustees would adversely affect them. (*H.C. Journals*, Feb. 21st, 1765.) A return obtained in 1824 shows that the ordering of "voices" was a common one at the end of our period.

	Bills contested in Committee.	Voices ordered.
1820 ...	21 ...	4
1821 ...	21 ...	12
1822 ...	35 ...	8
1823 ...	47 ...	17
1824 ...	75 ...	40

In 1827 the practice was so notorious as to be considered the normal and no longer the abnormal procedure. "It is now fully known that when a petition is presented against a Bill, any member may have a voice in the Committee; formerly, however, only those members whose names appeared in the order of commitment, or those who were added to the Committee by subsequent order of the House, had the privilege of voting at Committees; custom, however, has now superseded this latter practice, and the *fact of a Bill being opposed by petition necessarily creates an open Committee.*"—*Practical Instructions on the Passing of Private Bills*, by A Parliamentary Agent. London, 1827. The practice of ordering 'voices'—at least in Committees on public Bills—was certainly as old as 1621, though it seems to have been "contrary to order" in the case of a private Bill, and was forbidden. But it was extended by the Lords to private Bills as early as 1701. (See Clifford, ii., 824-8.) He gives no information as to the date at which the practice was extended to private Bills in the Commons. It seems not to have been frequent there until late in the eighteenth century. Bramwell, writing in 1809, says that on opposed Bills the order for "voices" was "frequently made" (*Proceedings on Passing Bills*, p. 29.)

indefinitely or to a date after the end of the Session, or voting the Chairman out of the chair, put an end to Committee proceedings and therefore to the Bill.[1]

The constitution of the Committee on the private Bill was therefore a matter of supreme importance to the promoters, and equally important was it that the attendance of the proper Members should be secured. After 1825, when the non-territorial half of the Committee was selected indiscriminately, the energies of the promoters, opponents, and their agents became more concentrated on securing a favourable attendance. Though, doubtless, this process of manipulation was most vigorous, and most expensive and harmful in the railway promotions that fall outside the period and the scope of this work, yet, nevertheless, we have seen that it was actively pursued within our period and in reference to legislation affecting local Government functions.

During the whole of the period which is under consideration, those who petitioned for a private Bill had to comply with Standing Orders made from time to time both by the Lords and the Commons. The system of Standing Orders relating to private Bills originated in the necessity for securing that those whose interests or

[1] See *Sherwood*, ed. 1828, p. 70, where he states that this "most objectionable and dangerous 'practice' has of late prevailed." He quotes a case (the Berks and Hants Canal Bill, 1825) where notice being taken in the House that the Committee on the Bill had, near the end of the session, adjourned for a month, the House ordered that the Committee should proceed with its sittings forthwith. Halcomb, p. 120, gives another case of similar action by the House: Camberwell and South Lambeth Waterworks Bill (60 *H.C. Journals*, 605). How old the practice of delaying and obstructing private Bill legislation upon Party political grounds was, may be gathered from a perusal of *The Humble Petition of the Inhabitants of the Soake of Peterborow . . . against the Undertakers there, with exceptions to their Act.* 1650 (B. M. 10358, c. 55), and *The State of the Adventurers' Case, in answer to a Petition exhibited against them by the Inhabitants of the Soake of Peterborow*, n.d. (B. M. 17816, m. 8), in which the inhabitants allege that they attended the Committee (of the Commons) for months and could get no hearing. There are mutual accusations of both private interest and political motives. The promoters are accused of trying to render the Parliament hateful to the people; the opponents of being Royalists in disguise. The Acts seems to have been one of the early Fen Drainage Acts connected with Bedford Level.

property might be affected by private or local legislation should have due notice that such legislation was proposed. This would seem to have been all the more necessary inasmuch as private Bills were not of necessity printed before 1705;[1] but, as a matter of fact, permanent arrangements for securing notice to interested parties do not seem to have come into being until after that date; and the printing of private Bills was one of the measures designed to secure such notice.

Standing Orders both for the conduct of public and private business were in existence before the eighteenth century.[2] But it was not until 1707[3] that the Standing Orders of the Lords relating to private Bills were ordered to be printed at the beginning of each Session. No such order seems to have been made by the Commons until long after this, the action of the Lords in improving private Bill procedure in advance of the Commons being, as we shall see, characteristic. But the century was well advanced before the provisions of the Standing Orders of either House, even as to notices alone, were developed into anything like a complete system;[4] the development, in fact, being necessitated by the increasing bulk and variety of private Bill legislation. Meanwhile, apart from occasional action by the House itself and from the operation of rules, especially of the Lords as to the consent of parties interested in

[1] In 1705 they were ordered by the Commons to be printed before the First Reading. (*H.C. Journals,* Nov. 12th, 1705.)

[2] The Standing Orders of the Lords (chiefly, however, relating to public affairs) seem first to have been separately printed in 1642. There existed a much older engrossed roll of Standing Orders. A collection of the Standing Orders of the Commons seems to have been printed by a Clerk of Committees about 1745. (Clifford, ii., p. 753.)

[3] *Lords' Journals,* Nov. 7th, 1707.

[4] Clifford gives examples of the Lords giving notice to fishmongers to attend the Lords on the day when a Bill to regulate the price of fish in London was to be considered; of the Speaker on the order of the Commons warning the owner of an iron mill, proposed to be abolished by a local Bill, as to the project; and similarly giving notice to an individual of the progress of an estate Bill. (*History of Private Bill Legislation,* ii., p. 761.)

estate Bills being required, there was no certainty that due notice of legislative projects would, at a time when public sources of information were few, reach those concerned. "At that time of day it too often happened," wrote an experienced agent, " that persons residing at a distance from their estates were to put to great expense for an inclosure, or had their lands cut through by a canal, almost without any notice at all, or at least with too little to afford them an opportunity of considering the proposition maturely, and of laying their observations upon such Bills before Parliament with effect."[1]

It is impossible here to describe fully the growth of the system of controlling private Bill legislation by Standing Order. But some of its more important features during our period may be outlined. In 1698 the Lords ordered that no consents to Estate Bills should be valid unless the persons consenting appeared personally before the Committee; and notice of the meeting of the Committee was to be affixed to the door of the House for fourteen days before its meeting.[2] In 1699 the Commons made it a standing order that the Chairman of a Committee on such a Bill should report whether all the parties to the Bill had given their consent.[3] The elaborate orders as to the public notices to be given of applications for private Bills seem to have been formulated with precision, for the first time, with regard to applications for Bills relating to Irish estates in 1707. A general rule was then laid down that, for the future, promoters were to cause notice of their applications to be displayed in each of the four Courts in Dublin during the whole of the term preceding the

[1] *Practical Remarks and Precedents of Proceedings in Parliament . . . relative to Bills for Enclosing or Draining Lands, making Turnpike Roads, etc.*, by Charles Thomas Ellis, London, 1802, p. vi.

[2] *Lords Journals*, April 20th, 1698.

[3] *H.C. Journals*, Nov. 24th, 1699, declared a Standing Order. Such action had been already ordered on particular occasions many times before. See instances quoted in *The Solicitor's Instructor*, by C. T. Ellis, May 22nd, 1572; May 7th, June 8th, 1604; April 27th, 1664; Nov. 9th, 1666, etc.

Parliamentary Session, and that they were to give notice in the Assize town of the county where the lands affected lay for one month before the Bill was brought in.[1] Little development seems to have taken place during the first half of the eighteenth century; but, before many years of the long reign of George III. had passed, the volume and variety of the business brought with it the necessity for some more definite code of Standing Orders. Besides estate Bills, fen drainage, and river navigation Bills, Bills for inclosure of commons and common fields, for the construction of turnpike roads, and even town improvement and canal Bills had become common. Nearly all such Bills necessarily involved interference with land. Hence in 1774 the Commons ordered that notices of intended inclosure, drainage, and improvement Bills should be posted on the church doors in parishes concerned, and should be proclaimed in Quarter Sessions; whilst application Bills for turnpike roads were to be advertised in the county newspapers.[2] Moreover, the Standing Orders were now used to regulate the form and contents of the Bill as well as the preliminaries to legislation. As early as 1752 the Commons had ordered that in all Turnpike Trust Bills a clause should be inserted compelling turnpike trustees to take security from the treasurer of the Trust, and that provisions as to a property qualification for trustees or commissioners to execute such Acts should be inserted.[3] In 1774 quite a large number of clauses were made compulsory. In inclosure Bills the names of the commissioners were always to be inserted, and so, where bargains had been made for compensating lords of manors or owners of tithes, clauses to carry out

[1] 15 *H.C. Journals*, 530, quoted in Clifford, ii., p. 763. See also the instances given by Clifford (ii., p. 762-3) of notices ordered to suit the specific cases on the Lindsey Level Drainage and St. Martin's-in-the-Fields Church Acts.

[2] *H.C. Journals*, April 25th, 1774; and see Clifford, ii., p. 764; also C. T. Ellis, *The Solicitor's Instructor*, p. 95, etc.

[3] *H.C. Journals*, March 12th, 1752.

such agreements had to be inserted and there was to be a clause compelling commissioners to account for money laid out by them and assessed upon the parties to the inclosure.[1] This method of safeguarding private property or public interests and of securing uniformity in private and local Acts, at least upon some points, was considerably developed. Certain provisions determining the width of roads, forbidding the erection of gates across them, and the planting of trees near to them, and provisions securing the appointment of surveyors to construct roads across enclosed lands, the payment for such roads by a rate on owners in order to prevent the cost falling on the inhabitants in general, and securing the construction of such roads within two years after the inclosure award were made compulsory.[2] In 1793 the Lords made comprehensive Orders as to the procedure and contents of Navigation (*i.e.*, Canal) Bills;[3] the Commons making similar Orders in 1794. In 1800 the Commons made further elaborate Orders as to the financial provisions of Turnpike Bills.[4] In the same year we may note the beginnings of the movement which resulted in the Lands Clauses Consolidation Acts, for Standing Orders regulating the provision as to purchase of lands in inclosure, road, drainage, paving, dock, or navigation Bills were drawn up.[5] Similarly the provisions in Bills relating to Courts for the Recovery of Small Debts were regulated, the maximum terms of commitment by such courts being limited, and a property qualification being imposed upon the commissioners of whom such courts were constituted.[6] The provisions as to notice being given at Quarter Sessions were extended in 1786

[1] *H.C. Journals*, April 15th, 1774.

[2] *H.C. Journals*, March 14th, 1781.

[3] March 11th, 1793.

[4] *Ib.*, March 3rd, 1800.

[5] *Ib.*, May 7th, 1800.

[6] *Ib.*, Feb. 2nd, 1787.

to Bills for the construction or repair of bridges.[1] In 1791 the provisions as to notice of application for Bills for paving, lighting, cleansing or improving any city or town were made more stringent, notice having to be given at the September Quarter Sessions, to be affixed to the Sessions House door, and advertised in the local paper at least three times during the August or September preceding the Session of Parliament in which the Bill was intended to be introduced. By the end of the eighteenth century, therefore, both Houses of Parliament had built up a system of Standing Orders, chiefly controlling the notices to be given of, and the consents to be obtained to, almost every variety of private Bill, together with other preliminaries, such as the deposit of plans and the estimate of the costs to be incurred, and to a certain extent controlling the actual contents of the Bills.[2]

Compliance with Standing Orders had to be proved in each House before a Committee of the House. In the House of Commons the proof took place, as a rule, before the Committee on the Petition. If leave to introduce had been given without the reference of the petition to a Committee as was usual with Inclosure Bills, then proof of compliance with Standing Orders was given before the Committee on the Bill. In

[1] *Ib.*, May 23rd, 1786.

[2] See Commons Orders as to Turnpike Roads and Canals (*Journals*, April 25th, 1774). Such orders were extended to nearly all local Bills in 1813, when plans, etc., were to be deposited locally, *e.g.*, with Clerks of Peace, Vestry Clerks, etc. For a fairly complete account of the Standing Orders in force at the close of our period, see Halcomb on *Passing Private Bills*, pp. 5-38. It seems not to have been very difficult for a Member of Parliament to get a Standing Order made for the convenience of a great landed interest. It is recorded that in March, 1813, some eleven Bills affecting Bedford Level were before Parliament. The Board of Governors, therefore, desired those of its number who were members of the Lords or the Commons to communicate with the Speaker desiring him to devise some course whereby, by Standing Order, all drainage, inclosure and navigation Bills affecting the Level should be notified to the Register of the Level. At the next meeting (March 23rd) Viscount Milton reports to the Board that such a Standing Order, upon his motion, has been made. (*The Drainage of Bedford Level*, by Samuel Wells, I., p. 603.)

either case the Chairman of the Committee was instructed to report whether the Standing Orders had been complied with or not; and, whenever either House made a new Standing Order, the Chairman was specifically instructed so to report that it had been observed.[1] In some cases the proof of compliance was strict, especially where landed estates were concerned. For instance, in the case of inclosure Bills it was necessary to give parol evidence of the answer of every proprietor concerned as to his consent to the measure, and the Lords insisted on such evidence being given upon oath.[2] Nevertheless, it seems very probable that omission to comply with Standing Orders were frequently condoned. The Reports of Committees on Petitions, as printed at length in the Commons' Journals during the first three-quarters of the eighteenth century, hardly ever contain a statement by the Chairman that Standing Orders or any Standing Order have been complied with. This may have been in some cases because there were many Bills, before 1774, to which no Standing Orders applied. But the practitioner of 1802, evidently, is far from contemplating neglect to comply as fatal to the chances of the Bill. "But here let it be remarked that though such be the rules and orders which each House of Parliament has laid down for the regulation of their own proceedings in passing such Bills, and though the neglect of the observance of any of them *may occasion a delay* in business, yet, if they be not all observed, nor yet *dispensed with*, the Act of Parliament will not be thereby rendered invalid."[3] The writer knew from experience that, even when a proper examination into the matter took place in the Commons, the non-observance of Standing

[1] See *Lords Journals*, Feb. 16th, 1705; March 11th, 1793, etc. *Commons Journals*, March 31st, 1699; Nov. 24th, 1699; Feb. 15th, 1700; Nov. 15th, 1775; May 23rd, 1786, etc.

[2] Ellis, C. T., *Practical Remarks*, p. 85, as to how far this examination, where it took place in Committee upon the petition, was in the Commons a farce.

[3] Ellis, C. T., *Practical Remarks* . . . p. 158.

Orders frequently only caused delay, and that compliance with them was often dispensed with. In the later years of our period such dispensation was given in the Commons with regard to a quarter of the Bills promoted, including both opposed and unopposed Bills.[1] And from 1824 onwards one of the principal duties of the Standing Orders Committee established in that year was to decide whether or not compliance with Standing Orders should be dispensed with,[2] and appeal lay on this point from the Committee on the petition to the Standing Orders Committee and thence to the House itself. The lack of compliance with Standing Orders, even if inadvertently or informally condoned, as in the case at least of unopposed Bills must often have occurred, was rendered less grave by the fact that neither of the three great parties to legislation, the Commons, the Lords, nor the Crown, inquired whether the procedure before the other parties was regular or not. "Neither House of Parliament, when a Bill is carried from one to the other, inquires whether all the forms of the House from which it is brought have been complied with; nor is any such inquiry made when it is tendered to the Crown for the Royal Assent. It is supposed that all have been observed, and nothing remains but for the Crown to give its assent to the Bill or to reject it."

But on Bills likely to be opposed it was important that the promoters and their agent should comply with the Standing Orders of both Houses; for before 1824 objections on this account could be raised in the Commons, either on the Committee on the petition or the

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[1] *Second Report from the Select Committee on Private Business.* (H.C. Reports, 1824, p. vi.)

	Bills Presented.	Standing Orders dispensed with.
1820 ...	142 ...	38
1821 ...	189 ...	35
1822 ...	146 ...	13
1823 ...	162 ...	41
1824 ...	225 ...	65

[2] See *First Report, loc. cit.*; also Clifford ii., p. 792.

Committee on the Bill. Even though the House of Commons ordered that the proceedings before Committee on the petition should be *ex-parte*, opponents being forbidden to appear, and the Committee merely inquiring, like a Grand Jury whether there was a *prima facie* case for the Bill, yet on that Committee opponents might, in fact, be represented by a Member anxious to make the most of omissions, though accidental and unimportant.[1] When a Bill was opposed, therefore, the chances of a grave omission passing unnoticed were probably small.[2]

This system, under which compliance with Standing Orders was inquired into by Committees of Members, first in the one House and afterwards in the other, the inquiry not being a preliminary to be cleared out of the way by officials, but a portion of Committee procedure on the Bills only to be undertaken after the meeting of Parliament, lasted, beyond our period, until 1847. During the railway promotion period it was proved to be costly, dilatory, and not infrequently far from judicial. The substitution of the method by which the official examiners of Standing Orders, sitting continuously, disposed of such inquiries before the beginning of the Parliamentary Session, was successful on all grounds, and the only wonder seemed to be why the cumbrous procedure it displaced had lasted so long.[3]

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[1] Sherwood, *Proceedings Private Bills*, 1828, p. 8, quoted by Clifford, ii., p. 792.

[2] After 1825 there was a rule that Standing Orders objections should not be raised after the Bill had been read a first time. This was to prevent such objections being held back by opponents for use in the Committee on the Bill. The rule is said to have been evaded. *Ib.*, p. 57.

[3] *Report from Select Committee on Private Bills.* (H.C. Reports, 1847, XII.). It led incidentally to a simplification of the requirements of the Standing Orders as to notice. When private Bills began to be sought for railways and other industrial concerns affecting large areas, the old system, which required notice to be given in the Quarter Sessions of every county affected, to be advertised in county newspapers, and even posted on the door of every parish church, proved very costly. To fulfil all these requirements cost much; to prove their fulfilment cost more. Thus the London and North-Western Railway had to publish notices in nine counties in order to obtain power to build Lime Street Station in

The Bill having passed before the Committee on the petition, the *prima facie* case for it having there been

Liverpool. The Manchester and Southampton Railway was to run through three counties only, but notices had to be given in no less than seventeen counties as well as in the *Gazette*. To prove compliance with Standing Orders in the case of the South-Eastern Railway Bill, 400 witnesses had to be in attendance, and the proof cost £10,000 (*Select Committee on Private Bills*, 1846, p. 105, Evidence of Sir George Burke). The saving in cost consequent upon the simpler and more expeditious procedure was estimated at £300,000 in the year 1847 (see Evidence of Nassau Senior, 1847, Report, p. 42). Senior would not guarantee the accuracy of the estimate, however. Affixing notice to church doors was occasionally a dangerous proceeding. " . . . in the case of inclosures there were riots not infrequently by parties standing round the door in order to prevent persons affixing the notice " (Evidence of Ellicombe, 1847 Report).

It should be noted that after the establishment of the Private Bill Office in 1810 the actual examination of Bills for compliance with Standing Orders as to *clauses* was done by clerks in that office and not by the Committee on the petition at all. Halcomb says that it was the duty of the clerks in that office between the First and Second Readings of the Bill to examine whether it conformed to the Standing Orders of the House and to certify the result in their examination book. In case of non-conformity they were to specify the folio in which the irregularity occurred. The following were the specific points to which their duties extended: " (1) That the Title and Provisions of the Bill are comprehended without the allegations of the Petition, and within the Order of Leave. (2) That proper blanks are left in the Bill. (3) That there are no erasures or interlineations. (4) And also, where necessary, that each Bill contain the particular clauses directed by the Standing Orders applicable to each respectively. (5) And that Bills for confirming Letters Patent have a copy of the Letters Patent annexed." (*On Passing Private Bills*, p. 40.) For clauses which were then (1836) compulsory, see *ib.*, p. 69 *seq.*

The Private Bill Office was established on the recommendation of The Select Committee on the Regularity of the Proceedings upon Private Bills, 1810. (H.C. Reports, 1810, II.) Its objects and character are best understood from the following Standing Order of the Commons (June 5th, 1810): " That a book to be called ' The Private Bill Register ' be kept in a room, to be called ' The Private Bill Office,' in which book shall be entered by the Clerks to be appointed for the business of that office (who shall not be employed or act as Agents in the management or conduct of any Bills in the House of Commons, nor be in partnership with any person so employed), the name, description, and place of residence of the Parliamentary Agent in town, and of the Agent in the country, if any, soliciting the Bill; and all the proceedings, from the Petition to the passing of the Bill. Such entry to specify briefly each day's proceedings in the House or in any Committee to which the Bill or Petition may be referred; the day and hour on which the Committee is appointed to sit; the day and hour to which such Committee may be adjourned; and the name of the Committee Clerk. Such book to be open to public inspection daily, in the said office between the hours of eleven and five." The office was established during the *régime* of Speaker Abbot, and was due to his influence. See *The Diary and Correspondence of Charles Abbot, Lord Colchester* (London, 1861), p. xxi.

established, and compliance with Standing Orders having been proved or dispensed with, the Chairman of that Committee reported the Bill to the House. The Second Reading was at once ordered, and, after an interval of a few days, was taken. The Bill was then referred to one of the Select Committees whose constitutions we have described, known as the Committee on the Bill. In somewhat rare cases the Committee received an *instruction* from the House, sometimes as to the scope of the detailed inquiry which it was to conduct, but usually as to the inclusion of some definite provision.[1] And doubtless those Standing Orders which provided for the inclusion of certain clauses in certain Bills were here enforced.

In describing the constitution of these Committees we have incidentally described the procedure before them. It is sufficient to recapitulate that it was at this stage that the Committee considered the Bill clause by clause and line by line. Witnesses might be heard for and against these details and counsel might appear for promoters and opponents.

Where great interests were involved the contest might be very lengthy, costly, and fought with bitterness, determination, and cunning.[2] Such contests, however, did not as a rule take place over the purely local Bills for improving lighting or policing towns, securing better administration of the Poor Law and the like, with which we are mainly concerned, though, even in these cases, there were sometimes tough struggles about which the formal records of Parliament tell us little. The struggles over River Navigation, Canal, and Road Acts were sometimes severe. But the most exciting contests

[1] See for example *H.C. Journals*, Feb. 26th and 27th, 1765. A Committee was instructed to insert certain financial clauses in a Turnpike Trust Bill.

[2] The important part of the proceedings now known as "proving the preamble," *i.e.*, establishing the general case for a Bill now conducted before the Committee on the Bill, took place, of course, during the whole of the period 1700-1835, principally before the Committee on the Petition, except where the stage was omitted.

were the memorable struggles over Railway Bills in the late 'thirties and early 'forties of the nineteenth century; and with these we have no concern.

One point of procedure may be mentioned. Parliamentary counsel are now exclusively engaged in Committee where they examine and cross-examine witnesses and make their speeches for or against the measures being examined. During the whole of the eighteenth century, however, it was always possible that their speeches might be made to the House itself. We have already noticed that the House usually referred petitions for Bills to a Committee, which Committee reported as to the advisability of a Bill, and that, when such a Committee reported favourably, the Bill was ordered, and was subsequently brought in. It was forthwith read a first time, and the Second Reading was ordered. The preamble, therefore, was endorsed by the House on the Second Reading. It was for this reason that, although before the beginning of the eighteenth century the practice of hearing counsel only in Committee seems to have been well established, yet it not infrequently happened that if the passage were threatened or were strongly objected to at either stage, counsel and even witnesses might, by leave of the House, be heard at the Bar for or against the proposal. The cases in which this occurred with respect to local Acts of the type now being considered seem to have been very few; and by the beginning of the nineteenth century the activities of Counsel were almost exclusively confined to the Committee. When, finally, the Committees on Petitions were abandoned in favour of the official examiners, the proof of the preamble was deferred to the Committee Stage proper, and the possibility of counsel being heard at the Bar of the House on the merits and demerits of a private Bill practically disappeared.[1]

[1] See Clifford, ii., 859-62 and Todd, *Practice of Parliament*, and Bramwell, *Proceedings in Passing Private Bills* there cited. It should, however, be noted that in the Committee on the Bill the preamble was

The Bill, having been thus examined and having escaped all the pitfalls with which the constitution of the Committees, especially, plentifully bestrewed its path, was reported. On the report (made by the Chairman of the Committee on the Bill) being presented, the House considered, and usually agreed to the amendments, if any, made by the Committee; and further amendments could be made at this stage by the House. But amendments to private Bills at the Report Stage seem not to have been common. The House then resolved that the Bill as amended be ingrossed and ordered the Third Reading.[1] Ingrossing the Bill meant transcribing it as amended in Committee, with any clauses added at Report Stage. It was transcribed upon parchment in the beautiful ingrossing hand. The practice is said to have originated in the necessity for

already, before 1802, being considered and considered last: "The preamble is usually considered after the other parts of the Bill, because upon consideration of the body of the Bill such alterations may be made therein as may also occasion the alteration of the preamble (Ellis, *Practical Remarks*, p. 46), but this evidently referred merely to the form of the preamble and not to its justification of the Bill. Although the hearing of Counsel at the Bar of the House on the Second Reading was not frequent, yet the practitioners who wrote during the early nineteenth century treated it as an ordinary and not an extraordinary procedure. Thus Bramwell, writing in 1809, seems to consider it far from an obsolete practice, and notes that though Counsel may have been ordered (*i.e.*, though the House has resolved that Counsel shall be heard), and are attending, yet they are not actually heard, except upon the motion "That Counsel be called in." The precedent which he quotes, however, belongs to the eighteenth century (Norwood and Paddington Canal Bill, March 4th, 1795), *op. cit. sup.*, p. 45. Nor does the writer of 1827 state that the practice was considered obsolete: "Should an opposition to the *principles* of the Bill be contemplated, a petition, stating the grounds on which it is opposed, and the reasons why it should not be further entertained, should be presented on the First Reading; and order is then made that the opposing party be heard by Counsel at the Bar of the House on the *Second* Reading of the Bill." (*Practical Instructions* . . . by a Parliamentary Agent, p. 24.) In 1836, however, the most that Halcomb can say is that the practice of hearing Counsel at the Bar on the Second Reading "can hardly be deemed obsolete" (*op. cit. sup.*, p. 91). He gives no instances, and merely states that the practice is still adhered to on Divorce Bills, a pretty good proof, considering the volume of other legislation that, if not obsolete, it was obsolescent.

[1] If the motions for ingrossment were defeated, the Bill would be lost. Bramwell points this out, p. 69 (quoting Hakewell), but he gives no instance.

securing that there should be some official record of the text of the Bill as altered by either House.[1] The ingrossment after Report Stage in the Commons was done in the Commons Ingrossment Office; and on the establishment of the Private Bill Office in accordance with the recommendations of the Committee of 1810, clerks called Examiners of Ingrossments were appointed whose duty it was to ensure that the ingrossed Bill was a correct copy of the Bill as reported, and to certify that such was the case. When we remember the mass of private Bill legislation of all kinds which characterised the whole of the reign of George III., and especially the last half of it, as well as the reigns of his immediate successors, and the length of many of the Bills, we need wonder little that sometimes as many as 100 ingrossing clerks were employed in the House of Commons alone.[2] It was the duty of the promoters to take the Bill to the office for ingrossment, and to pay for the work. The Bills were normally ingrossed in the order received, but expedition could be secured by paying an extra fee of two guineas, when all except the longest Bills would be copied within twenty-four hours.[3]

The Bill, having been ingrossed, was read by the House a third time, and was then sent up to the Lords. One further and important formality had, however, to be observed. The promoters had to pay the fees due upon the passage of the Bill through the Commons. Such fees were strictly due before the Second Reading of the Bill, but the account for them was generally presented only after the Act was passed.[4] The officers of the House had the right to withhold a Bill from Second Reading until the fees were paid or some person

[1] Clifford, i., 317.

[2] Report of Committee on the Method of Ingrossing Bills. Mins. of Evidence, pp. 2-25 (H.C. Reports, 1823), and see Clifford, i., 318-9.

[3] Ellis, *Practical Remarks*, p. 48. The practice of ingrossment was only finally discontinued in 1850, the ingrossment of public Bills having been abandoned by both Houses in 1849. See Clifford i., 322-3.

[4] Ellis, *Solicitor's Instructor*, 1799. p. 12 ; *ib.*, *Practical Remarks*, p. 42.

had become answerable, and that agent was, during the greater part of our period, very often one of the Clerks or Assistant Clerks of the House. Before he undertook the payment of the fees he doubtless assured himself of the credit of the promoters.

The custom of allowing the officers of both Houses, from the Clerk of Parliaments to the door-keeper and from the Speaker to the Serjeant's men, to obtain their principal remuneration from fees existed during nearly the whole of the period we are considering; and it was as ancient as Parliament itself. As regards private Bills, it may be that the practice was imported from the Courts by the Clerks in Chancery, who, in the middle of the fourteenth century, were charged to receive petitions which might give rise either to litigation or to legislation. Whatever the origin of the practice, in the eighteenth century the officials of both Houses derived all, or a large part, of their incomes from fees chargeable for all kinds of matters upon all kinds of persons, from Members of Parliament to the delinquents committed to prison. It is fees upon private Bills, probably the most remunerative of all fees to the officials, with which alone we are concerned. The fees in both Houses were customary, though they were from time to time regulated by each House and a table of fees sanctioned.[1]

But the resources of eighteenth century officials in interpreting a scale to increase their incomes were considerable; and as Committee Clerks and others acted as Parliamentary Agents to the promoters, and their assistance was doubtless very desirable, they were in a position to take full advantage of their ingenuity for the benefit of

[1] *E.g.*, the Lords caused a searching investigation to be made into the fees payable in that House in 1725, and, as a result, sanctioned a revised table (22 *Lord s Journals*, 628). The table as subsequently again revised is quoted in full by Ellis, *Solicitor's Instructor*, 1799, p. 81. The "roll" of fees which it displaced, dated from 1640, and, apparently had been tampered with in the interim. See Clifford, ii., 726. The table of fees to be taken in the House of Commons during the whole of the eighteenth century seems to have been that settled as early as 1694, amended 1699. (13 *Commons Journals*; and see Ellis, *Practical Remarks*, p. 42, *n.*)

themselves, as well as of greater and lesser men. Thus we find fees made cumulative upon the same Bill, the definition of the measures upon which fees were payable made very widely inclusive, and the two Houses either vainly endeavouring to limit the increasing charges or sanctioning them when they had become customary. The practice of charging more than one set of fees upon the same Bill seems to have originated with the officers of the House of Commons. The custom of exacting a fee from each person taking a benefit under a private Act was sanctioned by the House as early as 1649. Where a corporation, town, company, society, shire, or place was interested a double fee of £4 was to be paid to the Clerk and proportionate sums were payable to the Under-Clerk, the Serjeant-at-Arms, and the Serjeant's men. Thus a Bill might be "single" or "double," according as the parties interested in passing it were individual persons or groups. A Naturalisation Bill which related to several individuals was therefore a profitable affair to the officers of the House. There was no reduction on the quantity, if a number of foreigners ambitious to become Britons, joined in promoting a single Bill. Each might just as well have had a whole Act of Parliament to himself.[1] But more than one corporation or collective entity might be party to the promotion of a Bill. Each such interest was then charged as for a separate Bill, and the Bill became a two double Bill. Moreover, not only might the Bill be promoted by more than one separately chargeable promoter, but it might comprise more than one purpose. To allow an Act to achieve more than one object, or one object which could without intolerable strain be divided

[1] It is natural, too, that we should read of complaints as to the damage done to Officers' vested interests by the passing of a General Naturalisation Act in 1709. Similar complaints as to losses of fees, probably for transcribing, followed the establishment in 1701 of the rule that all Private Bills should be printed. As to the resistance offered by officials to general statutes which would have diminished their fees from Private Bills by rendering local Acts unnecessary, see *Autobiography of Arthur Young*, edited by M. Betham Edwards, 1898, p. 262.

into several by official ingenuity, was to put a premium upon the evasion of fees by the promotion of comprehensive Bills. Hence, gradually, with the tacit consent rather than the open authorisation of the House, an elaborate classification grew up, under which no Bill was a single Bill but a Bill for a single purpose promoted by a single person. Such Bills were, and are, rare. Other Bills were three single, two double, five single, three double, or four double Bills, or the like, the list being, probably, far from exhaustive.[1] The report of the Select Committee of Inclosures, 1800, provides many instances of how costly in proportion to the interests involved some Inclosure Acts were,[2] and the Lords Committee on Private Bill Fees of 1827 provides good examples of how these fees were piled up.[3] But all the classes of private Bill legislation with which we are more particularly concerned, Bills relating to town improvement and town regulation of all lands, to local reform of the Poor Law, the making and repair of turnpike roads, the provision of docks, harbours, markets, and all the multitudinous concerns now controlled by popularly elected local governing bodies, were particularly open to such cumulative fees. Such Bills were necessarily promoted by a group of persons, and were therefore "double" to begin with; and they usually provided for the achievement of more than one purpose. If, for instance, they contained power to levy more than one separate rate, each rate was deemed evidence of a

[1] The Lords in 1725 had adopted a scale which forbade more than one fee to be taken except on Naturalisation Bills. But not only did the officers make good their losses on the general Naturalisation Act by obtaining fees for administering oaths, and a right to charge fees upon the appearance of Counsel in course of Private Bill Legislation, but in 1756 they got the Lords to adopt the above system of charging Bills cumulatively. (28 *Lords' Journal*, p. 520; Clifford, ii., 729.)

[2] See Wingrove Cook on *Inclosures*. Preface, p. 8, quoted by Clifford, ii., 733.

[3] *E.g.*, the Nene Outfall Bill cost £2,000 in fees only. Twenty fees were claimed upon it. But the promoters were let off by paying fifteen. On the Ely Drainage Bill twenty fees were paid. Clifford, ii., 733-4, and authorities there cited.

separate object or interest, and the fees multiplied accordingly; and, as according to the ideas then prevalent, rates for particular services were made separately leviable in order that the individuals benefiting by each service should pay for it, the improvement Bills must usually have been complicated and heavy. Any Bill, for instance, which contained power to levy a paving rate, a lighting rate, a police rate, power to build a watch house, and to build or repair a market, rebuild or repair a town prison, to water streets, would have a separate fee charged in respect of each function; and if these functions were entrusted to more than one set of commissioners or if the Bill related to more than one parish or township, as Poor Law measures often, and Improvement Bills sometimes, did, the whole of the fees would be multiplied by the number of separate "interests" thus affected by the Bill. Even after the officers of the House were paid fixed salaries, this state of things continued, so that it is not surprising to find a Parliamentary Agent as late as 1847 stating that he had conducted a town Improvement Bill on which sixteen sets of fees were paid, and that if that Act came up subsequently for amendment sixteen sets of fees would be charged upon the amendment. Another instanced a Bill on which nine double fees had been paid.[1]

As to the iniquitous fashion in which fees were

[1] *Third Report of the Committee on Private Bills.* (H.C. Reports, 1847, xii.; p. 70, Evidence of George Pritt; p. 120, Evidence of A. Graham.) Those who defended the system of charging fees on Private Bills did so on the ground that such payments kept applications for private Acts of Parliament within tolerable limits. Hatsell (who was an interested party) strongly urges this. (*Precedents*, ii., 272.) The same ground was taken by the House of Commons Committee in 1821, who pointed out that some officers of the Commons were still at that date being paid directly by fee, though others had fixed salaries payable out of the fees. They did not recommend the complete abolition of individual emolument by fee, which obviously tended to stimulate the exertions of the receivers during the pressure of accumulated business. And, as to fees in general, "the present fees, although they were not probably devised for that purpose, seem nevertheless well calculated for restricting the applications for Private Bills within reasonable limits." Report from the Select Committee on the Table of Fees. (H.C. Reports, 1821, vol. iv.)

charged upon Bills without doubt of a public nature in the sense that their object was a change in the general law and not the establishment of some *privilegium* for a person, aggregation of persons, local or not, we need say little here, since the whole of the classes of Bills with which we are dealing were certainly, between 1700 and 1835, properly considered to be private Bills. Hatsell gives a long list of the Bills which for fee-paying purposes had been treated as private.[1] He was perfectly justified in his contention that Bills promoted by parishes, groups of parishes, hundreds, and other local units, were properly treated as private Bills, and that fees were payable on them in spite of the apparent prohibition of the House.[2] But even he could not justify the charging of fees upon measures, to quote a few instances only, for encouraging the trade in the sugar plantations, for preventing the export of hats out of the plantations, for making more effectual the laws for the recovery of ecclesiastical fees from Quakers, for continuing additional duties on stamped vellum, for regulating the cheese trade, for opening a trade to and from Persia through Russia, for laying an additional duty on foreign cambrics imported, to prevent brewers' servants from stealing barrels, for regulating pawnbrokers, and the like. These cases all occurred between 1730-47. The attempt of the House of Commons in 1751 to

[1] *Precedents*, ii., 261, 264, 268-9, *et seq.*; and see Clifford, ii., 730.

[2] *Precedents*, ii., 264. He quotes the *Commons Journals*: "On March 7th, 1699, Ordered and declared that all Bills relating to the poor be deemed and taken to be public Bills, and passed without paying fees for this same." On this he adds the note: "This order was made on account of a Bill then depending in the House of Commons for better employing and relieving the Poor in the City of London; which Bill arose out of a Committee appointed on Nov. 16th preceding, to consider the ways for better providing for the Poor and setting them to work. The order has never been understood to relate to particular applications which are frequently made from Corporations, hundreds and divisions for erecting poor houses, etc.—these having always paid fees. On April 22nd, 1765, a motion is made in the House of Lords 'that in all applications for Bills for the better relief and employment of the Poor, such applications be deemed of a public nature, and passed without paying any fees . . . .' The question being put, it was passed in the negative."

distinguish effectively between public and private Bills failed, fees being exacted, in spite of the exertions of Members of the House, in 1781 on a Bill for increasing the bounties on vessels engaged in the Greenland Fisheries, and in 1788 on a Bill for consolidating the law relating to the export of wool.[1]

A way was cleared for a reform of these abuses by the Act of 1790[2] relating to the Speaker's salary. It substituted for the ancient allowance of £5 a day a minimum salary of £6,000 a year. This salary was still payable out of his fees if they amounted to so much; any

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[1] See Clifford, ii., 731. Hatsell, ii., 271, remarks on the last case: "This was certainly a very general law, as the purport and intent of it were only to prevent more effectually the illicit exportation of wool. No doubt a good many of the above Bills were definitely promoted by an ascertainable body of persons in their financial interests, and were, therefore, on grounds of financial equity more properly chargeable than say a local Poor Law Bill or a local Street Improvement Bill; but a good many Bills for effecting changes in the general Law have been promoted by persons in their own interests, and doubtless always will be." Of course, the Bills so charged as Private were, when passed, printed among the Public General Acts. Bramwell, writing in 1809, gives an appendix in which he sets out in parallel columns Acts relating to the same subjects which were treated respectively as public or private during their passage through Parliament. Amongst those which had been considered Private Bills were various Acts relating to the East India Company; an Act to continue the Act to encourage Pilchard Fisheries, by allowing a further duty upon Pilchards exported (1797); an Act for the preservation of the Salmon Fisheries in Hants and Wilts (1797); an Act for improving the Fisheries in Solway Firth (1804); an Act to regulate the making and vending of Metal Buttons (1796); an Act to regulate buying and selling of Straw within certain limits in and near the City of London (1796); for regulating the trade of Pawnbrokers (1796 and 1800); to prevent unlawful combinations among Millwrights and to regulate their wages (1799); a similar Act as to Paper Workers (1796); for the regulation of Chimney Sweepers and their Apprentices (1804); to secure to Authors their copyrights of all new works of sculpture (1798), etc. (*Proceedings on Passing Bills, appendix.*) Bramwell also ventures to define Private Bills: "These are deemed Private Bills within the meaning of the Standing Order of Feb. 15th, 1700, which have only a special or particular operation. These may be divided into the following classes: (1) Local (including Inclosure Bills); (2) Personal; (3) Bills which concern any particular species of a generality—as Bills for regulating the trade of pawnbrokers, the office of coroners, or the leases of Bishops." Some other Bills, he says, are indeterminate. But he is careful to point out that his distinctions relate only to the introduction of, and procedure upon Bills, and not necessarily to the payment of fees, nor to the subsequent promulgation of the Acts (*ib.*, p. 3).

[2] 30 Geo., iii., c. 10.

deficiency was to be charged to the consolidated funds; but he remained entitled to any excess which his fees on private Bills might produce annually above the statutory £6,000.

In 1800 another Act[1] was passed which did more to clear the way for reform, at any rate in the Commons. It provided that on the expiry of the existing interests[2] the Clerk, the Clerk-Assistant, and the Serjeant-at-Arms were to receive fixed salaries, and their fees were to be paid to commissioners who, after paying those fixed salaries, were to apply the residue to providing further assistance in the departments of the Speaker, the Clerk, and the Serjeant-at-Arms, or for pensioning or otherwise helping those who had been there employed. But, in those days, it was hard to fight vested interests; fees were attractive, the holders of freehold offices tenacious and skilful, and their backers conscious of the usefulness of patronage and highly placed. The Act of 1800 had failed to convert the office of Serjeant-at-Arms into a mere salaried post. A further Act of 1812[3] was necessary for the accomplishment of the change; and indeed, it was not until 1832[4] that salaries were completely substituted for fees in the case of officers of the Commons. Though fixed salaries were now the rule the fees themselves were not abolished, nor very much reformed.[5] The scale of fees chargeable in the

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[1] 39 and 40 Geo., iii., c. 92.

[2] Hatsell, who had received a grant of the office of Clerk of the House (or, more strictly, Under-Clerk of Parliaments), by letters patent dated 1768, was still Clerk in 1800, and John Ley, by letters patent, dated 1797, was entitled to the office after his death.

[3] 52 Geo. III., c. 11.

[4] By 2 and 3, Wm. IV., c. 105.

[5] The course of reform in the mode of paying the officers in the House of Lords was very similar, but in this respect the Lords were, contrary to the rule, later in acting than the Commons. The practice of paying the Lord Chancellor a fixed salary in lieu of fees was adopted in 1832 (2, 3, Wm. IV., c. 122). And in 1824 arrangements had been made whereby the Clerk of Parliaments and his assistants should perform their

House of Lords, which had been fixed in 1725, was revised in 1824. Further inquiry was made by a Committee of that House in 1827, chiefly owing to the efforts of Lord Hardwicke, who desired reform; but vested interests proved too strong.[1] In the Commons there were the House fees still regulated by the scale of 1731,[2] and the fees payable for the Committee hearing and the preliminary stages at the private Bill office which had been fixed in 1830. It was not until after repeated inquiries, suggestions, and recommendations that the fees in the Commons were simplified in 1847 by the substitution of an entirely new scale, which, if it did not greatly reduce fees, made them more intelligible and fair.[3] The Lords' fees were similarly revised in accordance with the suggestions made by Sir John Lefevre in 1858.

II.—The House of Lords.

To all outward appearances the procedure of the House of Lords upon private Bills differed little from that of the House of Commons. If the Bill was to begin in the Lords a petition to the Lords for leave to

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duties personally (the offices having been freehold, disposable during the life-time of the holders, and often executed by deputy), and should receive fixed salaries. The patronage of the office (which had carried with it the right to nominate assistant clerks), was vested in the Lord Chancellor, and, gradually, salaries were substituted for fees (at all events, for fees on Private Bills) in the case of minor offices in both Houses. See Clifford, ii., 739-42.

[1] *History of the Drainage of the Great Level of the Fens*, by Samuel Wells, 1830, I., 159.

[2] *Report of the Lords Committee on Fees upon Private Bills*, 1827. But in 1801, the Commons ordered that Inclosure Bills affecting not more than 300 acres should be treated as single Bills, and those affecting not more than 100 acres should pay half the fees on Single Bills (*Journals*, July 2nd, 1801), and in 1822, that Bills either extending the term of a Turnpike Trust, or merely for consolidating two or more trusts, should be Single Bills. (*Journals*, July 4th, 1822.) See Halcomb, p. 151.

[3] *Commons Journals*, May 14th, 1847. Chiefly as a result of the recommendation of the Select Committee of the Commons of that year. See Third Report.

introduce it was necessary.[1] The petition was then referred for consideration and report; and, if the report were favourable, leave was given to introduce and read a first time. If the Bill had originated in the Commons it needed no introduction as it was "brought up" from the other House and laid upon the table of the House. Any peer might thereupon "take up" the Bill and move

[1] It has already been pointed out that Bills of a local, as distinct from a personal application were, of necessity, introduced into the Commons, for they almost invariably contained provision for levying a rate or imposing some toll or charge. To introduce them into the Lords, therefore, would have been a breach of the privilege of the Commons, and would only have resulted in their rejection by the Commons. Hatsell gives many instances of the rigidity with which the Commons insisted on its privilege in the case of purely local, or even in some cases, personal measures. (*Precedents*, iii., 105, 107, 125, 129.) In the last case the St. James's Paving Bill was rejected merely because the Lords altered the *number* of the Commissioners who were to administer the Act, and therefore control the collection and expenditure of the rate. (See *H.C. Journal*, July 8th, 1783.) Similarly a Bill for declaring a prison "lately built at Horsham," to be a county gaol, was rejected on May 4th, 1790, because it originated in the Lords. Hatsell, iii., 130. As a matter of fact the only Bills almost invariably introduced into the Lords were Estate Bills and Divorce Bills. As soon as writers began to think it worth while to describe Private Bill procedure in detail they separated Private Bills into three classes: (1) Bills which must be introduced into the Lords; (2) Bills which must be introduced into the Commons; (3) Bills which may be introduced into either House.

Halcomb places in class (1)

(*a*) Bills which might affect the peerage, *e.g.*, Bills for restitution of Honours or Blood;

(*b*) Estate Bills, except those in which provision was made affecting any Estate or Interest of the Crown. (These should be introduced into the Commons according to the declaration in *H.C. Journals*, May 10th, 1811);

(*c*) Divorce Bills and other Bills of a judicial character.

Class (2) he says, consisted of Bills involving any charge or toll upon the public.

Class (3) included "other Bills which neither partake of a judicial character nor impose a pecuniary burthen upon the subject, as, for example, Naturalisation, Name Bills, and the like." (*On Passing Private Bills*, by John Halcomb, Lond., 1836.)

There seems, however, no reason why Estate Bills should *necessarily* have been introduced into the Lords. There was neither rule nor privilege governing the matter. But the procedure followed by the Lords on such Bills made it a matter of great practical convenience that they should go to the Lords first, and probably for this reason, the custom introducing them to that House seems to have been universal. The classification adopted by Halcomb appears in substance in the earlier works by Ellis, *The Solicitor's Instructor*, 1799; and *Practical Remarks*, 1802; and by Sir George Bramwell, *The Manner of Proceeding upon Bills in the House of Commons*, 1809 (published anonymously).

that it be read a first time, and promoters always secured that some peer should do this.[1] The First Reading was almost invariably unopposed, though, of course, there was neither right nor binding custom that this should be the case. Henceforward the procedure on the Bills in the House was the same, whether they had been introduced into the Lords or brought up from the Commons. They were read a second time, referred to a Committee for detailed consideration, reported, and read a third time. Bills which had originated in the Lords were then sent down to the Commons for consideration. Those which had been sent up from the Commons had only to receive the Royal Assent.

But nothing can be truer than that the British Constitution is not what it seems; behind this apparent identity of procedure in the two Houses there lay some real, and, indeed, radical differences.

(1) Petitions for Bills were referred by the Lords, nominally, at least, not to a Committee of Members of the House, but to the Judges.

(2) The Committees on the Bill in the Lords were differently constituted from those in the Commons, and developed their procedure into something closely resembling its modern form at an earlier date than in the Commons.

(3) The Chairman of Committees in the Lords developed in practice into a paid permanent official, independent of party politics, having skilled technical assistance, and performing in reality the duty of examining both the form and substance of private Bills in the public interests, and for both Houses.

(1) *The functions of the Judges in Proceedings on Private Bills.*

The Judges and the Law Officers of the Crown still receive writs of *attendance* on the House of Lords.

[1] In default of other arrangement, the Lord Chairman (the *de facto* Chairman before 1800, the recognised Chairman after his formal appointment in 1800) generally took up the Bill.

They do not receive a writ of *summons* as Members of the House; for in their capacity as Judges or Law Officers they are not of the baronage of the kingdom. But the House of Lords is not merely the assembled baronage forming a portion of the sovereign legislature. It is one of the constitutional successors of the ancient *magnum concilium*, and, continuing the judicial functions of that ancient body it still formally calls for the attendance of the Judges, the Law Officers of the Crown, and other legal notabilities. Their actual assistance is now seldom required, but in the eighteenth century it was regularly demanded of the judges and was duly rendered by them.[1]

It will be remembered that, to deal with the ancient petitions to the King and his Council in which both public and private Bills originated, receivers and triers of petitions were appointed. The first receivers of petitions were the Clerk of Parliaments[2] and others.[3] The practice of appointing judges of the Common Law Courts as receivers was established before the date of the earliest journals of the House of Lords.[4] The triers appointed were always peers or prelates. Such appointments were made during the whole of the eighteenth century, and indeed, are still made.[5] Whether the judges ever actually received the petitions or not, by the eighteenth century they had certainly ceased to do so,

[1] See Anson, *Law and Custom of the Constitution*, I., 46, 51, 54. 1892 edition.

[2] This is still the official title of the person popularly known as the Clerk of the House of Lords.

[3] Clifford, i., 272.

[4] 1509.

[5] *E.g.*, *Lords' Journals*, Oct. 12th, 1722. The Receivers of Petitions from Great Britain and Ireland appointed were Thomas Prat, Chevalier et Chief Justicier; Robert Eyre, Chevalier et Justicier; and Jean Hiccocks, Ecuyer. The Triers appointed were all peers: six dukes, seven earls, two viscounts, and three barons. Similar appointments of Receivers and Triers of Petitions "de Gascoigne et des autres terres et pais de par la Mer et les Isles" were made. A motion in the Lords to omit such appointments for the future was defeated Jan. 28th, 1740.

and, such are the contradictions between word and fact in our Constitution, they had as certainly begun to try them, whilst the triers had long ceased to do so. References to Committees on Petitions in the journals of the House of Lords begin in 1621, and, at that date, the House appointed as attendants to advise the Committee three Serjeants-at-Law together with the Attorney-General and such of the judges as the Lords serving on the Committee chose to call.[1] In 1606 a judge and a serjeant had been directed to attend a Committee on a Bill, the Committee itself consisting of fourteen peers and prelates.[2] Similarly another Water Supply Bill was in 1640 referred to a Committee of twenty-one peers and prelates, with a judge as assistant.[3] As time went on the judges served chiefly not as assistants to Committees, whether on petitions or on Bills, but as real, though not titular triers of petitions. They acted, in fact, as independent advisers technically equipped to decide judicially whether or not legislation was necessary to achieve the purposes of the promoters, if so, whether the purposes were desirable, and whether the Bills were in a form which would achieve the desired ends. For, in 1705, the Lords ordered that petitions for private Bills should be referred to two judges who were to summon before them all the parties "concerned in the Bill," and after hearing them and perusing the Bill were to furnish a written opinion on it, and were to sign the Bill.[4]

This order was in quite general terms, and, therefore, had it been strictly complied with, all petitions for Bills (together with the Bills themselves) would have gone

[1] 3 *Lords' Journals*, 141, 179, quoted in Clifford, ii., 789.

[2] 2 *Lords' Journals*, 441, May 24th, 1606, Clifford, ii., 57. A Bill promoted by the Corporation of London, relating to the New River. The King's ancient Serjeant, so long as that officer was appointed, received a writ of attendance on Parliament like the judges. (Anson, i., 54.)

[3] 4 *Lords' Journals*, 153, Feb. 6th, 1640. (Clifford, ii., 81.)

[4] *Lords' Journals*, Feb. 16th, 1705; Ellis, *Solicitor's Instructor*, p. 3. The witnesses gave evidence before the Judges upon oath, and were previously sworn at the Bar of the House. (*Lords' Journals*, Dec. 18th, 1706; ii., 769.)

before the judges. But, as has already been noted, the great majority of private Bills were introduced into the Commons. Only Bills of a personal character could be introduced into the Lords; and of such by far the most important and numerous class consisted of Estate Bills,[1] the rest being chiefly Name Bills and Naturalisation Bills. I fail to find any cases of petitions for Name Bills, Naturalisation Bills, or the like, being referred to the judges.[2] Thus, in practice, the reference was confined to Estate Bills. This procedure remained unchanged during the whole of our period; but the local Acts, with which we are mainly concerned, as they were necessarily introduced into the Commons, were not sent to the judges in this way.[3]

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[1] Chiefly Bills for dealing with settled land now rendered unnecessary by the Settled Land Acts and similar general legislation.

[2] Nor do any of the early writers on Private Bills procedure, Ellis, Sir George Bramwell, Sherwood, or Halcomb give any case of a petition other than for an Estate Bill being referred to the judges; and it should be noted that had the order of 1705 ever been fully observed, not only all petitions for leave to introduce Bills into the Lords, but all Bills brought up from the Commons would have been sent to the Judges, for the order concludes: "The same method to be observed as to Private Bills that are brought up from the House of Commons before the Second Reading by sending a copy of the said Bill signed by the Clerk to the Judges." Had this rule been observed at any time during the eighteenth century, it would have added much to the work of the Judges, and before the end of that century the strain would have been intolerable.

[3] The reference of Bills to Judges is now *specifically* confined to Estate Bills, and is, in many cases, unnecessary even within that now somewhat rare class of Bill. The Judges were in 1843 relieved of the necessity of hearing evidence on the preambles of such Bills, and ordered to report merely whether, assuming the truth of the preamble, the Bill was reasonable and in proper form. See Clifford, ii., 769-70. A full and practical account of the part played by the Judges in Private Bill legislation is to be found in Ellis, p. 4 and 8-11, and in Halcomb, p. 182 *seq.* A more formal account is to be found in Bramwell, *Proceedings on Passing Bills through the Lords.* On the petition for an Estate Bill being presented to the House of Lords, it was immediately referred to two named Judges. From an entry in a "Bill of Costs," given by Ellis (p. 101), it appears that the Judges took the work of considering such petitions in rotation; and that if a Judge to whom a Bill was referred was absent on circuit, the promoters could petition for the appointment of another Judge according to the rotation. For such a petition, and action taken upon it, see *Lords' Journals,* Feb. 19th, 1794. The day after the petition had been presented, the agent engaged in soliciting the Bill called at the Parliament Office in Abingdon Street, and received back the

In the case of an Estate Bill, the judges' report having been read, leave to introduce the Bill was given, the Bill was introduced and forthwith read a first time. If the Bill had been introduced into the Commons and brought up thence, a Member of the House "took up the Bill" from the table on which it had been deposited, and moved the First Reading, which was usually granted as a matter of course. Before the Bill could be read a second time it had to be printed; but Bills brought up from the Commons were already printed. In the Lords there was no fixed interval between the First and the Second Reading. The peer in charge of the Bill usually therefore, took an early opportunity of moving the Second Reading. The Bill might or might not be opposed at this stage. If it were opposed Counsel might be heard at the Bar of the House and witnesses might also be called.[1] But, as time went on, it became more and more customary to defer opposition, both to the principle and the details of the measure, until the Committee stage. The practice of discussing the merits of the Bill in the Second Reading and of hearing Counsel and witnesses thereon did, however, subsist up to the limits of our period, though, in the later years, it was

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petition, together with the Order referring it to the Judges. The agent then got the necessary witnesses sworn at the Bar of the House of Lords by a clerk, and procured a certificate that they were sworn. He prepared the form of the Judges' report (containing statements to the effect set out above, p. 88), and attended on the Judges with the witnesses and the necessary documents. The Judges examined the witnesses and the petition and other documents so far as he thought necessary, and, as a rule, signed the Report as already made out, "though sometimes the Judges direct alterations to be made in the Report, or some special matter to be stated." (Ellis, p. 10.) Sometimes only one Judge went through the petition and Bill, in which case the Report was left with the other Judge for signature. It may be noted that, within our period, only the Judges of the three ancient Common Law Courts were liable to this duty, the Judges of the Court of Chancery not being summoned as attendants to the Lords. The Lords always fixed a date after which they would not receive Reports from Judges, and this fixed the date by which Bills had to be introduced.

[1] *E.g.*, Lord Boyne was granted leave to be heard by Counsel at the Bars of the House, against Lord Bellew's Estate Bill. (*Lords' Journals*, March 8th, 1765.)

becoming obsolescent in the Lords as in the Commons.[1] Although Bills were sometimes opposed on the Second Reading, for Counsel and witnesses to be heard by the House would have been very exceptional at any date between 1700-1835. Indeed, before 1700, the practice of hearing the witnesses and Counsel in Committee had been well established, and was preferred by the House.[2]

(2) *Committees in the House of Lords.*

The Bill, having passed its Second Reading, was referred, as a rule, to a Select Committee. It might, of course, have been referred to a Committee of the whole House, but instances of ordinary private Bills being so referred seem to have been very rare indeed. In the Lords there was no device for regularly constituting Committees on private Bills, parallel to that of the Speaker's lists in the Commons. The reader of the Lords' Journals for any part of the eighteenth century fails at first to find any rule underlying the choice of a Select Committee on a private Bill in the Lords. The number of the members of the Committee varies; the composition varies too; neither rank, office, nor calling seems to be regarded.[3] The explanation is simple. The Lords on

[1] As late as 1831 Bramwell could write as if the hearing of Counsel and witnesses on the Second Reading in the Lords were not yet obsolete: "There is a reluctance in the House to hear Counsel and witnesses on the Second Reading of Private Bills on account of the inconvenient interruption which it necessarily occasions to the public businesses." *Proceedings on . . . Bills in the Lords* (London, 1831, p. 46). He makes the same remark as to the hearing of Counsel in the Commons in the *Proceedings on Bills in the Commons*, published in 1809. And in *Practical Instructions on the Passing of Private Bills . . .*, by a Parliamentary Agent (London, 1827), p. 24, opposition by Counsel on the Second Reading is contemplated as quite a practical possibility.

[2] See Clifford, ii., 858.

[3] *E.g., Lords' Journals*, xxii., p. 32, Nov. 9th, 1722. A Naturalisation Bill is read a first time, and referred to a Committee consisting of the Lord President, 2 dukes, 19 earls, 3 viscounts, 7 bishops, and 15 barons, all or any five of them to meet on the following Monday at 10 a.m., in the Prince's Lodgings. On Nov. 12th, an Estate Bill is referred to the Lord President, the Lord Steward, the Lord Chamberlain, 3 dukes, 1 marquis, 20 earls, 2 viscounts, 1 archbishop, 10 bishops, and 17 barons. A Harbour Bill (March 5th, 1723), was sent to the officers mentioned above, together with the Lord Privy Seal, 6 dukes, 19 earls, 5 viscounts,

any given day referred all private Bills, whatever their character, to a Committee of all the peers then present in the House, or any five of them.[1] It was the business of the Parliamentary Agent soliciting the Bill, especially if it were an opposed Bill, to see that when, after the Bill was read a second time, it was referred to a Committee so constituted, the peer in charge of the Bill and as many other Members of the House favourable to the Bill as he could find were present, so that they would become, automatically, members of the Committee. If for any reason the agent had not attended to this, or had been unsuccessful in his efforts, he got some Member of the House to move subsequently that all the Lords who had attended the House during the current Session should be added to the Committee.[2] This process was the equivalent, in the Upper House, of the practice of giving all Members "voices" in the Commons.[3]

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10 bishops, and 21 barons. To take a much later instance, on Jan. 28th, 1794, a Naturalisation Bill was committed to 4 earls, 3 bishops, and 4 barons, whilst on March 4th, 1794, an Estate Bill is committed to 1 duke, 3 earls, 1 viscount, 4 bishops, and 6 barons, an Inclosure Bill being sent at the same time to the same Committee.

[1] This accounts for the fact that whenever the recorded attendance at the House was large, the Committee was a large one, but did not include every member *recorded* as having been present, only those actually in the house at the moment of the Order being named on the Committee. When the recorded attendance was small, all those present are almost invariably named on the Committee. Compare, for instance, Committees appointed on Jan. 28th and Feb. 11th, 1794, with those appointed on Feb. 17th, 1794, or those appointed on Jan. 1th, 1795, with those appointed on Feb. 3rd, 1795. In the one set of cases, where a comparatively *large* attendance is recorded not quite all recorded as present are appointed. In the other set, a small attendance being recorded, all present are appointed. On Feb. 11th, 1794, only four peers were present. These would not be a quorum for a Private Bill. Accordingly the House forthwith added all Lords who had been, or should be present, during the Session to the Committee. (*Lords' Journals* for dates cited.)

[2] Halcomb, p. 198, *e.g., Lords' Journals,* XLI., 49, Dec. 6th, 1796, ordered "That all the Lords who have been present this session, who are not named in the Committee . . . be added to the said Committee." (Case of a Naturalisation Bill.)

[3] And it was attended with the same results, though the facilities for defeating Bills by mere weight of numbers which the procedure offered, appear to have been abused less in the Lords than in the Commons. See *Report of Select Committee (Commons) on Private Business,* 1837. (H.C. Report XXIII., 1858, Evidence of J. Richardson.) The canvassing of

The quorum for a Select Committee on a private Bill in the Lords was always five, a smaller and more convenient number than the eight which formed the nominal quorum in the Commons until 1824. Moreover, the Lords never appear to have countenanced the constitutional fiction of recording the attendance of a quorum, whether, in fact, a quorum was present or not.[1] The agent was to be careful to secure the attendance of peers at the Committee. "To form a Committee," writes Ellis, "there must be five Lords, and unless you request two or three peers to attend it is not easy to form a Committee."[2]

It will be seen then, that in actual practice, the Committee in the Lords, as in the Commons, when the Bill was unopposed, was bound to consist of a small number of its supporters, present as a matter of form, the real examination of the measure being conducted, as will presently be shown, by the Lord Chairman of Committees. If the Bill was opposed an open Committee was almost sure to be appointed,[3] and, if the opposition

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peers to vote in Committee for or against Bills on which they had not heard evidence, prevailed, but "not to the same extent, nor with the same indecency as in the Commons."

[1] We have external evidence that the peers, at an early date, were sometimes conscientious and laborious in the consideration of Private Bills: "Many objections against this work have been made several days to the Lords of the Committee, who carefully hear and examine all. . . ." (Ford, E. *A Designe for bringing a Navigable River from Rickmansworth to St. Giles in the Fields.* London, 1641.)

[2] *Solicitor's Instructor*, p. 53.

[3] After 1800 the practice of "opening" the Committee by adding to it all Lords who had attended the House during the Session was, if not universal, the rule rather than the exception. See Clifford, ii., 826. It was also very common before 1800; and Halcomb writes as if there would be no difficulty, should the supporters of a Bill among the Peers not have been present at the Second Reading, and thus *ipso facto*, have been placed on the Committee, in obtaining the Order made either "that all Lords who have attended in the then Session be added to the Committee," or "that the original Order of commitment be waived, and that the Bill be committed to all the Lords who have attended the then present Session." He seems to have regarded this merely as a convenient machinery for securing that the friends of the Bill should be on the Committee. (*On Passing Private Bills*, p. 198.) But Peers could not vote by proxy at Committees. (*Ib.* 200.)

were vigorous the Committee contest, however legitimately carried on in the Committee itself, might end in a mere counting of heads, the promoters and opponents whipping up supporters among the peers, to the extent of their influence, quite regardless of whether or not such peers had attended the meetings of the Committee.

The House of Lords, however, has, in modern times, always been somewhat ahead of the House of Commons in the reform of private Bill procedure, and, though the Committee on private Bills in the Lords remained what we have described them to be during the whole of our period, immediately after its close a sufficient and salutary reform in the constitution of Lords' Committees took place. As a result of an inquiry a system which, substantially, is that still in force, was inaugurated by Standing Order in 1837.[1] A Committee of Selection consisting of five peers, including the Lord Chairman of Committees, was appointed, and every opposed Bill (that is every Bill against which a petition of any kind had been presented) was referred to a Select Committee of five peers chosen by the Committee of Selection. These five peers were selected by the Committee of Selection solely with a view to competence, impartiality, and willingness to serve. Local knowledge, and, therefore, direct local influence, were excluded; and the Committee were, in fact, expected to act as a jury of inquiry and to give their decision on the evidence, and not to be influenced at all by any other knowledge of the particular case which they might otherwise possess or have acquired. Moreover, business habits were introduced. The Committees, instead of meeting when they liked and adjourning for as long as they pleased (which had formerly been the case), were to meet on the appointed day at eleven, sit till four, and continue such sittings, if necessary, from day to day until the examination of the Bill was concluded. The reform was

[1] *Lords' Journals*, July 6th, 1837.

immediately successful, and was imitated some ten years later, with equal success, by the Lower House, where the need for reform, as has been already pointed out, was greater.[1]

(3) *The Lord Chairman of Committees.*

The most important difference between the procedure of the Lords and the Commons was, and is to be found neither in the use which the former made of the judges of the Common Law Courts, nor in the differences between the constitution of the Committees in the two Houses, but in the development of the powers of the Lord Chairman of Committees.

An official Chairman of Committees was formally appointed by the House of Lords for the first time on July 23rd, 1800, when the House came to the following resolution:—

Resolved: That this House will, at the commencement of every session, proceed to nominate a Chairman of Committees of this House.

Resolved: That such Lord as shall be so nominated do take the chair in all Committees of the whole House unless where it shall have been otherwise directed by this House.

Resolved: That such Lord as shall be nominated do also take the chair in all Committees upon private Bills unless where it shall have been otherwise directed by this House.

Ordered: That an humble address be presented to His Majesty to desire that His Majesty will be graciously pleased to make such annual allowance to the Chairman of Committees of this House as His Majesty shall think fit.

Ordered: That the said address be presented to His Majesty by the Lords with the White Staves.

[1] For a full description of the procedure adopted by the House of Lords, see *Report of the Select Committee (Commons) on Private Business*, 1838. (H.C. Reports, 1837-8, XXIII., p. 46, Evidence of the Duke of Richmond.) A more succinct account is given in a single paragraph of the Evidence of St. George Burke before the same Committee.

Ordered Nemine Dissentiente: That the Lord Walsingham do take the chair as Chairman of Committees of this House for the remainder of the session.[1]

In this as with so many other features of the British Constitution we have but the formal and open recognition of what had for some time been the actual practice. Lord Walsingham[2] was annually reappointed in every session until that which commenced in November, 1814. He then retired on account of his ill-health and infirmity, and it was stated in the Journals of the House that he had discharged the duties of Chairman of Committees "for these twenty years last past."[3] That would place the date at which he assumed those duties in 1794, although he was not regularly appointed as Chairman for the session, or paid a salary until 1800. It is to be observed that the language of the Journals in 1814 is strictly accurate. The Lords do not then state that he had held the office for twenty years, but that he had "discharged the weighty and important duties of Chairman of Committees. . . ." The truth seems to be that for many years before 1800 it had been a practice that peers, having special interest in, knowledge of, or capacity for Committee work had regularly been chosen as Chairmen when the Lords went into Committee. Doubtless during any given session some one of those members, if present, was invariably chosen as Chairman, and was, in fact, *the* Chairman of Committees. Now, as has already been shown, the practice was for a private Bill to be referred to a Committee of all members present at the

[1] *Lords' Journals*, xlii., 636, July 23rd, 1800.

[2] Thomas, second Baron Walsingham, had succeeded to the title in 1781. His father was William de Grey, appointed in 1753 Clerk Assistant and afterwards Reading Clerk in the House of Lords. (Hatsell, *Precedents*, ii., 249, where the *Lords' Journals* of Jan. 11th, 16th, and 31st, 1753, are quoted touching his appointment.) He became Lord Chief Justice of the Court of Common Pleas, and was created first Baron Walsingham in 1780. His son, therefore, had an hereditary interest both in the Law and in the procedure of the House of Lords.

[3] *Lords' Journals*, L. 8, Nov. 10th, 1814.

moment when the Second Reading took place and the commitment of the Bill was ordered. What more natural, then, than that the Lord who was usually voted to the chair when the House was in Committee on a public Bill should control the proceedings of the House when in Select Committee, of this formation, on a private Bill? The member whose ability had been proved in Committee of the whole House, would, probably, be predominant also in Select Committees, would, in all probability have special taste as well as aptitude for Committee work, and would be the fortunate possessor of that type of mind which rejoices in legislative detail. Conversely, a member active in Committees on private Bills would be preparing for the Chairmanship of Committees of the whole House. However this may be, it is a fact that during the eighteenth century we find certain members of the House notable for the regularity of their attendance at the House on all occasions, great or small, normal or extraordinary, and whether the business were legislative or judicial. Not only are this small group always appointed on formal Committees like those on the Privileges of the House, or the Journals, or the Committee appointed to draw up the Address in answer to the Speech from the Throne, but, by being almost invariably present, they automatically become members of Committees on private Bills as well. And of this small group of members we find one usually exercising that one function of a Chairman of Committees (whether of the whole House or of a Select Committee) of which it is possible to learn anything from the Journals, viz., reporting Bills to the House.[1]

[1] Thus taking the Session of 1765 as an example, we find two peers, Lord Delamer and Lord Sandys, present at almost every meeting of the House, whether the business done is legislative, judicial, or both. They, therefore, become members of almost every Committee appointed to consider a Private Bill. They sometimes present such Bills to the House. They nearly always report such Bills from the Committees to which they have been referred. When the whole House goes into Committee Lord Delamer always reports from that Committee. He, therefore, would seem to have been the usual Chairman of a Committee of the whole House. The two peers each report nearly half the Private Bills,

Among the most active of such Lords of Parliament at the end of the eighteenth century were some of the Bishops, and if we turn to the Journals for 1794, the date at which, according to the resolutions of the Lords, Lord Walsingham must have commenced his career we find the Lord Bishop of Bangor evidently taking a

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though one or two other peers report Bills occasionally. Between the beginning of the Session and the end of April the Lords went into Committee of the whole House eight times. The progress made by those Committees was reported by Lord Delamer five times, Lord Botefourt once, the Earl of Marchmont twice. Private Bills were reported as follows: Lord Delamer reported seventeen Bills, Lord Sandys thirteen, the Earl of Westmoreland one, Lord Boston four, Lord Winchelsea two, Lord Botefourt two, the Earl of Marchmont two, Lord Leigh one, and the Duke of Portland one. Lord Sandys was not omitted from any Private Bill Committee. Lord Delamer was omitted from only one. (*Lords' Journals,* Jan. 24th to April 24th, 1765.) Thus it is clear that Private Bill Committee work was dominated by two peers, one of them being the usual chairman of a Committee of the whole House. And when the usual chairman of the Committee of the whole House does not take the chair, one of the small group active on the Select Committee does. Any other year selected at random provides the same result. Here is a diary of May, 1781 (from *Lords' Journals*) :—

May 4th, 1781.—Lord Bagot reports two Estate Bills. The Bishop of St. David's reports one Estate Bill.

May 7th, 1781.—Lord Scarsdale reports four Estate Bills, and two Road Bills; and also reports from the Committee of the whole House on the Paper Duty Bill.

May 8th, 1781.—Lord Scarsdale reports one Estate Bill, two Road Bills. He also reports the Levant Trade Bill, the Bugle Bill, and the Neutral Goods Importation Bill from the Committee of the whole House.

May 10th, 1781.—The Earl of Abercorn reports an Inclosure Bill.

May 14th, 1781.—Lord Scarsdale reports a Bridge Bill, a River Navigation and Street Bill, a Road Bill, an Inclosure Bill, and an Estate Bill. He also reports the Expiring Laws Bill from the Committee of the whole House.

May 16th, 1781.—Lord Scarsdale reports four Road Bills and one Bridge Bill.

May 16th, 1781.—The Earl of Abercorn reports an Inclosure Bill.

May 21st, 1781.—Lord Scarsdale reports a Road Bill and an Inclosure Bill.

May 22nd, 1781.—The Duke of Chandos reports four Private Bills. Lord Scarsdale reports three Private Bills.

Similarly in 1782 Lord Scarsdale, who still usually reports from Committee of the whole House also reports a majority of the Private Bills. (See *e.g., Lords' Journals,* April 17th, 18th, 24th, 25th, and 30th, 1782.) It is plain, therefore, that long before the appointment of Lord Walsingham as official chairman of Committees upon both Public and Private Bills in 1800, one peer was *de facto* the Lord Chairman of Committees, and occupied that position in Select Committees upon Private Bills, as well as in Committees of the whole House on Public Bills.

most comprehensive part in the process of private Bill legislation.[1] Except for the few opening days of the session (when another Welsh Bishop temporarily takes his place) it is invariably he who introduces the Naturalisation Bills and Name Bills which (the petitions for Estate Bills being referred to judges), on petition, are at once introduced and read a first time. It is he who reports private Bills of all kinds, which, from the rapidity of their progress we may take to be unopposed Bills, from the Committees carefully or perfunctorily considering them. In fact, we find that, like his predecessors of earlier years, during the whole of that session he performs all the work which a real, though not formally appointed Chairman of Committees, would have performed; and he is invariably a member of every Committee appointed whether on public or private Bills or on any other matter. This continues throughout 1794. When we come to 1795 we find that from

[1] A brief account of his activities during the opening months of the session of 1794 is interesting. It may be put conveniently in diary form. The Session opened on Jan. 21st, 1794.

Jan. 22nd, 1794.—The Earl of Mansfield introduces two Naturalisation Bills.

Feb. 10th, 1794.—The Bishop of Bangor introduces a Naturalisation Bill, and *reports* from a Committee the two Bills introduced by Lord Mansfield.

Feb. 11th, 1794.—The Bishop of St. David's introduces another Naturalisation Bill; reports the Bill introduced by the Bishop of Bangor.

Feb. 12th, 1794.—The Bishop of St. David's introduces a Naturalisation Bill.

Feb. 13th, 1794.—The Bishop of St. David's introduces another Naturalisation Bill.

Feb. 20th, 1794.—The Bishop of Bangor reports two Naturalisation Bills.

Feb. 26th, 1794.—The Bishop of Bangor reports a Naturalisation Bill and an Inclosure Bill.

March 3rd, 1794.—The Bishop of Bangor reports two Inclosure Bills.

March 4th, 1794.—The Bishop of Bangor introduces a Naturalisation Bill.

March 10th, 1794.—The Bishop of Bangor reports an Inclosure Bill, a Road Bill, and a Naturalisation Bill.

March 11th, 1794.—The Bishop of Bangor reports a Canal Bill, and a Naturalisation Bill.

March 11th, 1794.—The Bishop of Bangor reports a Canal Bill, presents a Name Bill.

April 16th, 1794.—The Bishop of Bangor reports the Foundling Hospital Estate Street Bill, and the Bedford Poor Bill.

the opening day of the session onwards the work hitherto done by the Bishop of Bangor is performed by Lord Walsingham, who had already, as early as 1782, acted as an occasional Chairman of Private Bill Committees.[1] From the session which began in January, 1795, onwards, until his formal appointment at a salary in 1800, Lord Walsingham continued to occupy the chair of the Committee of the whole House and to display the same kind of activity in private Bill legislation as Lord Delamer, Lord Scarsdale, and the Bishop of Bangor had already displayed. Thus his appointment was but the recognition of an accomplished fact accompanied by the grant of a salary for services which doubtless highly deserved payment.

No doubt the well-deserved official recognition and reward of the Lord Chairman was due to the enormous bulk which private Bill legislation had reached in 1800, involving a corresponding burden upon the occupant of the office. It had, apparently, long been clear that, especially in the case of unopposed Bills, some more certain guarantee for the careful detailed examination of this great mass of law than the constitution of the Committees in either House provided, was necessary. The judges already submitted the highly technical Estate Bills to an expert scrutiny; the resolution referring *all* private Bills and petitions for Bills to them had never been carried out. And if we find, as we shall find, that even before the formal appointment of Lord Walsingham as Chairman, he was already exercising that peculiar influence over private Bills, which it is still the real but unwritten law that the Lord Chairman shall exercise, we are entitled to infer that Lord Walsingham was but following, possibly with greater precision and care, a custom which had been established, by his forerunners, in fact though not in official title.

It is unfortunate that there are no contemporary

[1] See, *e.g.*, *Lords' Journals*, April 18th, 1782.

books or documents other than the bare and dessicated Journals of the House of Lords from which, had they existed, we might have learned the real, as distinct from the nominal, powers of Lord Delamer, Lord Scarsdale, the Bishop of Bangor, and their predecessors.[1] For this might have enabled us to illustrate more fully the transition of an unrecognised and unpaid, into a sanctioned and salaried office. But the chief activities and powers of the Lord Chairman were not mentioned in the terms of his appointment; nor are they at all adequately described either in modern books of practice, or in the standard history of private Bill legislation.[2]

"The Solicitor's Instructor" was published in 1799, and may have been written before that date. The formal appointment of the Lord Chairman took place in July, 1800. Nevertheless, the book provides ample evidence that, before the formal appointment, the Lord Chairman *de facto* was performing functions exactly similar in kind to those exercised to-day by Lord Onslow and his accomplished Counsel. We do not know precisely when these functions were assumed nor how they grew. Like other vital features of our Constitution they rest upon an unwritten convention, the precise history of which, probably, never can be traced. We do know that before 1800 they conditioned the

[1] The earliest book dealing exclusively with private Bill legislation is *The Solicitor's Instructor in Parliament concerning Estate and Inclosure Bills*, by Charles Thomas Ellis, London, 1799 (B.M. 518, k. 22), (5), to which reference has already often been made. It was re-published in a rather extended form as *Practical Remarks and Precedents of Proceedings in Parliament relative to Bills for Inclosing and Draining Lands, making Turnpike Roads, etc., etc.* (London, 1802), and, in that form, was a great success, running through several editions, the last of which was published in 1813. See *Practical Instructions on the Passing of Private Bills* . . . by a Parliamentary Agent (London, 1827), introductory remarks, p. iii., where the writer praises Ellis's book, but points out that it was intended for agents rather than for solicitors, for whose needs he is catering. He further states that there was then (in 1827) no book which sufficiently *explained* the procedure of both Houses upon Private Bills. This was probably true, as the works of Bramwell, prior to that date, were formal and correct rather than explanatory.

[2] But see Clifford ii., p. 798.

activities of the Parliamentary Agent; and it seems a legitimate assumption from the facts stated above, both as to the existence of a Chairman, nominally re-chosen by each Committee of the whole House, but really permanent, and from his activities concerning private Bills, that the functions and powers shown to be existing in 1799 were exercised at even earlier dates and were of gradual growth. Certainly they were not the creation of Lord Shaftesbury,[1] however much his great abilities, exercised through a long reign, may have affected their development in detail.

Ellis twice refers in his text to the power of the Lord Chairman to amend, accept, or reject private Bills. He first of all describes the procedure on an Estate Bill (originating, it will be remembered, in the Lords) up to the Committee stage. Then, after advising the verification of extracts from title deeds and the like, he continues: "It is advisable to wait upon the Chairman of private Committees in the House of Lords with the Bill a few days before you go into the Committee to know if he approves of it."[2]

Later, when dealing with an Enclosure Bill, introduced into the Commons, and whilst still considering procedure on the First Reading in that House, he writes: "As soon as the Bill is printed[3] either write to or attend the Chairman of Private Bill Committees in the House of Lords, to know if he approves the Bill."[4]

What Ellis preached he, no doubt, perforce, practised. In the appendix to his book he published two taxed Bills of Costs for an Estate and an Enclosure Bill respectively. These entries show that in the session 1798-9, whether the Bill was one introduced into the Commons or into the Lords, before the Committee stage

[1] Lord Shaftesbury held the office from 1814 to 1851.

[2] *Solicitor's Instructor*, p. 16.

[3] *I.e.*, before the First Reading.

[4] *Solicitor's Instructor*, p. 34.

in *either House* was entered upon, Lord Walsingham was consulted, because to convince him of the regularity of the measure and the propriety of its contents was necessary to the passing of the Bill.[1] The extracts

[1] The following are some of the entries from the Taxed Bill of Costs referring to the Estate Bill:

	£	s.	d.
April 20th, 1798.—Lord W., the Chairman of the Private Committees, having requested to see us on the Bill, as to consents, etc., previous to going into the Committee attending the House, to inspect the entry of the proofs given in Committee on the former Bill	0	13	4
1798.—Paid for copy of Evidence given on the former Bill ...	1	1	0
Copy thereof for Lord Walsingham	0	7	6
April 21st.—Attending Lord Walsingham by his appointment in Harley Street, as to the consents, etc., when he suggested several alterations which he requested might be submitted to Mr. Shadwell; and attending Sir John in Upper Grosvenor Street to request he would use his influence with some Lords to attend the Committee	1	1	0
Attending Mr. Shadwell a considerable time on Lord Walsingham's observations and agreeing upon the alterations to be made	0	13	4
,, 22nd.—Attending Lord W. again by appointment at his house in consequence of his having consulted with the Chancellor respecting the consents, and he recommended Sir John seeing the Chancellor to endeavour to get him to dispense with the consents of his Brother and Uncle; and his Lordship requested the particulars and rental of the property might be set forth by way of Schedule and verified	1	1	0
(A good deal of other business consequent upon the above.)			
,, 24th.—Attending the adjourned Committee, and the Speaker* signed his consent, but Lord W. thought proofs should be given of Sir John's son being living. Committee was therefore adjourned until next day	2	2	0
* Probably the Speaker of the Lords, *i.e.* (usually), the Lord Chancellor.			
,, 25th.—Attending the adjourned Committee accordingly, and Lord W. was of opinion, prints of the Bill ought according to the Standing Rules to be delivered to each person concerned in the consequences of the Bill, and their signatures proved. Attending Sir John, explaining the difficulties to him, afterwards on the Committee again, and Lord W. agreed to report the next day, and Committee further adjourned	2	2	0
,, 26th.—Attending the adjourned Committee, and Lord W. at last agreed to report specially as to the consents of the several persons entitled in the way the Judges had, and the Bill was reported accordingly, and ordered to be taken into consideration on the 30th	2	2	0
From the taxed Bill of Costs, an Inclosure Bill, etc., etc. The entries relate to work done immediately on the Second Reading in the Commons; *i.e.*, before Committee stage			

given below demonstrate clearly that his approval of the contents of the Bill and his satisfaction that all formalities had been observed were conditions precedent to private Bill legislation, at any rate in cases which were not of popular or political interest. If it is on an Estate Bill it is he who is to be satisfied that all is in order, and on formal points he is apparently more difficult to move than the judges themselves. When the Bill is one originating in the Commons, before the Committee stage in that House is entered upon the Bill is submitted to him and the amendments which he suggests are forthwith accepted. And all this is occurring at a date when the formal office of Chairman of Committees in the Lords is not yet created and the peer exercising its functions has neither formal status nor salary.

His formal appointment did take place, however, as we have already noted, in July, 1800.[1] There is ample evidence that the power wielded by the Lord Chairman did not diminish. We have already seen that,

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in the Commons, the Bill, of course, originating in the Commons, 1798:

Dec. 6th, 1789.—Attending in Upper Harley Street on Lord W., the Chairman of the Private Committees in the House of Lords, to leave a print of the Bill, and make an appointment with his Lordship for looking through the Bill, and to know if his Lordship would be satisfied with Admiral W.'s consent, who resided in the Bishopric of Durham, if it was given by letter of Attorney, when his Lordship referred mè to Mr. Arnot, one of the Clerks of the House of Lords, to inquire whether he ever remembered consent being given by Power of Attorney on a like occasion; and attending Mr. Arnot in South Audley Street, for that purpose, who informed me he did not recollect any case, and by all means recommended personal application to be made 0 13 4

,, 8th.—Attending Lord W., according to an appointment, and discussing several clauses in the Bill, and taking down his Lordship's minutes for altering the Bill 0 13 4

,, 11th.—Preparing amendments agreeable to Lord W.'s directions, with references to folios and lines of the House Bill 0 10 0

[1] Apparently there was no discussion on the resolution to appoint a paid Chairman. The appointment is not mentioned in *Parliamentary History*, see Vol. 35 (for 1800).

in the case of the Woolwich Improvement and Poor Law Act of 1807, it was Lord Walsingham who insisted that the Rector and Parish Officers should be inserted as Commissioners *ex-officio*, and that there there should be a property qualification for all the elected Commissioners.[1] Unfortunately this kind of external evidence of his activities is not easy to find; but the business of his office evidently was increasing both in volume and importance. He had the assistance of Counsel. There appears to be no official record of the first appointment of such an officer; but in 1808 the House of Lords recognised his existence; for the House resolved upon a Humble Address to the Crown representing "that the office of Counsel to the Chairman of Committees of the House of Lords is an office to which very material duties are annexed . . . ." and praying for his better remuneration. It seems probable that this officer was originally appointed by the Lord Chairman himself, probably out of the Clerks of the House of Lords, some of whom were doubtless barristers,[2] and all of whom were remunerated by fee; a consideration which explains why an officer could exist either upon an otherwise insufficient salary or no salary at all. At any rate, before 1814, the present organisation of the duties of the Lord Chairman and his assistant was complete and was in full working order. The circumstances of the time and the personality of the Lord Chairman had combined to secure open recognition for an office the duties of which were no less important because, though fully known to those immediately concerned, they were nowhere specifically stated or defined. So that when it became necessary for the first recognised holder of office to retire the Lords could, in 1814, order:—

Nemine Dissentiente. That a Humble Address be presented to H.R.H the Prince Regent, humbly to

[1] *Supra*, p. 28. (MS. Parish Vestry Minutes, Woolwich, 1807.)

[2] Lord Walsingham's father, the Lord Chief Justice of the Common Pleas, had been Clerk in the Lords. See *supra*, p. 96 *n*.

represent to His Royal Highness the high sense which this House entertains of the ability, integrity, impartiality, and indefatigable industry with which Lord Walsingham has discharged the weighty and important duties of Chairman of Committees of this House, and of the private Committees of the same for these twenty years last past; and by means of whose vigilant exertions the honour and justice of this House, in the administration of its legislative functions for the benefit of its various suitors by private petition have been upheld and maintained with the utmost purity and dignity. That this House deeply regrets the misfortune of his Lordship's inability from infirmity any longer to execute the duties of that important office and his necessary absence as a most serious loss not only to this House in particular but to the public at large, and most earnestly begs leave to recommend His Lordship's eminent and essential services to His Royal Highness's most gracious consideration."[1]

At the same time Lord Shaftesbury was appointed as the successor to the peer whose services were eulogised in such warm terms for the enlightenment of posterity and the stimulation of princely generosity. Lord Shaftesbury held the office from 1814 to 1851, and, from the beginning to the end of that period appears to have been both as vigilant and as authoritative as Lord Walsingham had been.[2]

[1] *Lords' Journal*, L., p. 8, Nov. 10th, 1814. The Prince Regent replied in laudatory terms to the address, and recommended the House to concur in the grant to Lord Walsingham of an annuity of £2,000. The House concurred cheerfully. *Ib.*, L. 22, 24; Nov. 23rd and 24th, 1814.

[2] The appointment of Lord Chairman of Committees takes place at the beginning of each Session, and is formally for that Session alone. Bramwell writes as if this annual appointment were more than form: "It is usual at the commencement of every Session for the House to appoint a particular Lord to take the chair in all Committees of the House for that Session." (*The Manner of Proceeding on Bills in the House of Lords*, by (Sir) George Bramwell, London, 1831.) This was perfectly true, but to tell the whole truth Bramwell might have explained that Lord Walsingham was reappointed each year from 1800 to 1814, had exercised the office for nearly six Sessions before his appointment,

The few books of practice which were issued during the earlier portion of Lord Shaftesbury's long Chairmanship testify to this. The writer of 1827, dealing with the procedure on a River or Canal Navigation Bill, introduced into the Commons, advises, "After the Committee have reported on the petition, the sooner the Bill is presented, the sooner will the solicitor be enabled to arrange the clauses with Lord Shaftesbury. By expediting this stage of the Bill parties save much expense."[1] A few pages later this writer gives the only contemporary account of what actually took place:—

"Lord Shaftesbury is the perpetual Chairman of Committees in the House of Lords. In this stage,[2] or rather immediately after the First Reading of the Bill, the agent and solicitor should wait on his Lordship, and submit to his inspection a printed copy of the Bill; on which occasion he reads it over with them and makes his observations on its various provisions, etc. It is likewise necessary to forward to Lord Shaftesbury three days prior to the sitting of the Committee[3] on the Bill a printed copy with the blanks filled up, when his Lordship adds to or expunges from it whatever he thinks proper.[4] By adopting the above measures, the parties interested in its welfare are not only spared much time

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and that Lord Shaftesbury had occupied the office from 1814 up to the date of the book. Clifford does not trace back the exercise of the powers we have described beyond Lord Shaftesbury's time. See *History of Private Bill Legislation*, ii., 798.

[1] *Practical Instructions on the Passing of Private Bills through both Houses of Parliament*, . . . by a Parliamentary Agent. London, 1827 (B.M. 6,281, d. 13), p. 24.

[2] He is still dealing with a Canal Bill in the Commons when the printed Bill is presented to the House immediately after the First Reading.

[3] *I.e.*, the Commons Committee.

[4] In the British Museum copy of this book, the author, who evidently used this copy for the purpose of emendation with a view to another edition, has interpolated an MS. footnote: "The Committee cannot sit till the Chairman of the Lords Committee returns the Bill in order that his Lordship's suggestions should be adopted and introduced into the Bill."

and expense, but have a further advantage of being able to foresee and provide for the objections to which the Bill would be liable in the Lords. It is therefore incumbent on persons who wish to forward their measures through Parliament, with as little delay as possible, to pay particular attention to this interview."[1] A little further on, after describing the Commons Committee on the Bill and noting that it may meet seven days after the Second Reading, the author reiterates his advice:—

"Prior to the sitting, however, the printed copy of the Bill, which had previously been submitted to Lord Shaftesbury, should be obtained, for the purpose of adopting in the Bill for the Committee the several alterations which his Lordship may have thought proper to suggest. By adopting this step, as has been before remarked, the impediments which the Bill might meet with in the Lords are not only fully anticipated but carefully provided for."

It is quite evident from this, almost the only account then printed in a book of practice of this vital incident in private Bill promotion, that the Lord Chairman was, on all ordinary occasions, and more especially in the case of unopposed Bills, the arbiter of the form and contents of the Bill, and, according as his views were or were not met, of its fate. The evidence which Halcomb furnishes supports this view. He writes, when dealing with the drafting of a private Bill to be introduced into the Commons:—

"It will also be proper to consider maturely what clauses will, or will not, be allowed to pass in the Upper House; and what particular clauses their Lordships will require to have inserted. A strict, but very salutary superintendence and examination of private Bills being there exercised by the Noble Chairman of their Lordships' Committees."[2]

[1] *Ib.*, p. 27.

[2] Halcomb, *On Passing Private Bills*, 1836, p. 67. The Parliamentary inquiries into the methods of Private Bills Legislation which occur a

The Lord Chairman, therefore, being sufficiently powerful to shape the Bill immediately after its introduction in the Commons and before its presentation to a Commons Committee, naturally was equally prominent in the Lords. Where Bills for changes of name or naturalisation originated in the Lords, it is he, who, more frequently than any other peer, introduces them. When petitions for Estate Bills are referred to the judges, it is to the Lord Chairman that the report of the

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little later, furnish further evidence of the Lord Chairman's position—*e.g.*, during the Evidence of Mrs. St. George Burke before the Commons Committee of 1838, the following dialogue takes place :—

Mr. FRESHFIELD : " In point of fact the Counsel of Lord Shaftesbury does control the form of the Bill in the House of Commons?"

WITNESS : " Yes, and I never presume to pass a Bill in Committee until Lord Shaftesbury has seen every clause."

CHAIRMAN : " You do that to avoid expense?"

WITNESS : " Yes ; and if we introduce clauses to which he objected, it might have the effect of throwing out the Bill." (*Report from Select Committee on Private Business.* H.C. Reports, 1837-8, XXIII., p. 9.)

Again, from a discussion on the utility of breviates (witness is speaking of a clause in an unopposed Bill) . . . "it was unusual, and it was ordered to be struck out by Lord Shaftesbury, and so the Bill, when it came before the Committee, was amended in that respect." "That irregularity would probably have escaped observation if there had been no breviate?—It would not have escaped Lord Shaftesbury's observation ; but I think the Members of the House of Commons would have had no knowledge of it."

The witness was then asked by Mr. Loch if an officer, for the House of Commons, to perform similar duties to those of the Lord Chairman ought not to be appointed.

He replied : " If there were a jurisdiction created assimilated to that of Lord Shaftesbury in the House of Lords, it would be an additional security, but I think Lord Shaftesbury's superintendence in the House of Lords is very nearly a perfect security."

In the course of a discussion concerning the duties of such an officer in the Commons, this witness mentioned that not only did Lord Shaftesbury's Counsel (Mr. Palk) read the Bills, but that they were personally revised by Lord Shaftesbury himself, and he continued : " . . . . all Bills go to Lord Shaftesbury in the first instance, whether opposed or unopposed ; and all clauses of Bills proposed to be introduced go to Lord Shaftesbury. I should never venture to introduce a clause into the House of Commons without Lord Shaftesbury's approval. But for Lord Shaftesbury ' every kind of abuse might not perhaps be expected, but would be practicable.' " (*Ib.*, p. 38. Evidence of Mr. Richardson.)

To take a final instance from the inquiry of 1846 : " The solicitor often requires to see Lord Shaftesbury, to meet any of his Lordship's objections to the Bill, which he must do before the Bill can go into Committee in the House of Commons." (*Report of the Select Committee of the Commons on Private Business*, 1846, p. 128, Evidence of Mr. Walmesley, Parliamentary Agent.)

judges is presented prior to the First Reading of the Bill;[1] and, as we have already seen, the Lord Chairman might be more difficult to satisfy on technical points than the judges themselves.[2] It was he who moved the Second Reading of the private Bill ; and named the day for the meeting of the Committee on the Bill.[3] It was he who, before 1838, usually presided over that Committee, and always over Committees on unopposed Bills.[4] So certain was it that the Lord Chairman's views would have been met in the Committee of the Commons, if the measure was one originating in that House, that the author of "Practical Instructions" contemplates amendments in the Lords on ordinary measures as something exceptional.[5] It was the Lord

[1] *Practical Instructions*, p. 153. Halcomb, p. 186. This was by Standing Order of March 15th, 1809, as amended Feb. 8th, 1825 ; but it was customary before the Standing Order was made. If Bills brought up from the Commons were referred to Judges, the Judges' report on these, too, were to be furnished to the Lord Chairman.

[2] *Supra*, p. 103 *n.*

[3] *Practical Instructions*, p. 43.

[4] Where a measure was specially taken charge of by another peer, as became frequently the case in the early nineteenth century, when contentious Canal and Railway Bills began to appear, that peer moved the Second Reading of the Bill, and by custom became automatically the Chairman of the Committee on the Bill.

[5] "Unless amendments have been made, or clauses added, while the Bill was in Committee, it may be reported to the House (of Lords) on the same day that it passed Committee." (*Practical Instructions*, p. 49.) It must be remembered that a Bill amended in the Lords ran some risk of being lost altogether. For as amended it had to be returned to the Commons. The Commons might not agree to the Lords' amendment, in which case a conference might occur, or, more commonly in ordinary cases, the Bill would be dropped. But the more usual danger was that the Bill might not be returned to the Lords *in time*. See *H.C. Journals*, Nov. 16th, 1780, where, from petitions, it is clear that a Bill for providing a new Gaol, for regulating the Poor, and for Lighting and Paving the City of Gloucester was lost because, having been amended in the Lords and therefore sent down to the Commons, it was not returned to the Lords until the day of prorogation, and thus failed to receive the Royal Assent. As to amendments in the Lords, it may here conveniently be noted that if the Lords amended what were technically financial clauses of local Acts, and the Commons agreed to such amendments, the practice was to allow a new Bill embodying those amendments, to be introduced into the Commons, and passed rapidly through the House without payment of fee, thus saving the privilege of the Commons the Bill, and, to some extent at least, the promoters' pockets. See Halcomb, p. 146.

Chairman, usually, who reported Bills to the House; and finally, should amendment be found necessary on the Third Reading, "a printed copy of the Bill with the proposed amendments inserted and pointed out to my Lord Shaftesbury should be submitted for his approval; if his Lordship has no objection to their being made he will move them with the Bill on the Third Reading."[1]

Thus it is not too much to say that, from the moment at which the private Bill was drafted until it had passed through its stages in both Houses, the dominating fact in its history was, in ordinary cases, the power of the Lord Chairman of Committees. If the Bill were of considerable interest to the general public, to the inhabitants of a particular locality, or to powerful individuals, it might be strenuously opposed and as strenuously advocated at any stage. Members of either House might seek to secure or to prevent its First or Second or Third Reading in either House. They might pack the Committee for or against it. They might seek to amend it in order to improve it or in order to destroy it. They might obtain an open Committee with a view to securing its acceptance or rejection, apart from its merits or demerits, by a mere counting of heads. They might attempt to adjourn the Committee, or allow it to lapse. They might take technical objections on Standing Orders, or multiply witnesses and so overwhelm the Bill by mere weight of money. All or any of these and other things might be done in course of a promotion during nearly the whole of the period of which we are writing; and the procedure of one House or the other, at any date in that period, afforded facilities for exercise of much perverted ingenuity. But these things only occurred in cases where a Bill threatened political power, financial interest, or aroused local prejudice. Even in such cases it is highly probable that the objection of the Lord Chairman to a clause or his insistence upon

[1] *Practical Instructions*, p. 149.

a clause would be upheld in the Lords.[1] In all other cases, and these were a great majority, it was sure to be upheld. The Chairman was, in fact, the Committee.

[1] To make this clear from a present-day parallel. If a Bill is promoted for controlling the supply of Electricity within the County of London, or for amalgamating three great Railway Companies, it may be strongly advocated and opposed in either House on the Second Reading, and, if it reaches Committee, its contents and character may be determined by the members of the Committee in either House, influenced very greatly by the views of the Board of Trade or other Department of State; but even in such a case the views of the Lord Chairman (or of his Counsel, or, in general, both), would carry great weight with the Committee, especially in the Lords. And even a Bill of such importance would be submitted to the Lord Chairman before being introduced into either House, and his representations as to the contents of the Bill would powerfully influence the promoters before the real contest over the Bill had commenced. In ordinary cases, as for instance in the case of a Bill of the usual type promoted by a Railway, Tramway, or Gas Company, or a Dock Company, or by a Municipal Corporation, the views of the Lord Chairman and his Counsel are practically law to the promoters. The agents know that clauses of certain types must be included in the Bill, and that clauses of other types, if included, will not be allowed to pass. In the drafting of measures, therefore, the agents act upon this knowledge. Where some clause of a new type and context is proposed, its fate will be settled by the views of the Lord Chairman, as advised by his Counsel. Of course, when the Bill reached the House of Lords Committee, the Committee might reject the views of the Lord Chairman, and accept those of promoters or opponents, but in practice this does not occur. The Lord Chairman, of course, frequently acts upon the views of Government Departments, taking the advice of the Board of Trade, the Home Office, or the Local Government Board, as the case may be, on matters within their cognizance, though, on occasion, the Department may communicate directly with the promoters of the measure or bring their views, by memorandum or otherwise, directly before the Committee. Unopposed Bills, too, are submitted to a scrutiny (to-day) by the unopposed Committee presided over by the Chairman of Ways and Means in the Commons. But the control of the Chairman in the Commons is neither so strict nor so extensive as that of the Chairman and his Counsel in the Lords. It, therefore, seems to be true that the chief control over Private Bill Legislation to-day is in the hands of the Lord Chairman of Committees. He watches over Bills to see that no alteration of the general law is obtained by Private Bill, that the interest of the general public, as distinct from those of a group of persons or the inhabitants of a particular place, are paramount, that model clauses, or the clauses of consolidating Acts are incorporated where necessary, and that no others are incorporated, and so forth. But the Lord Chairman will allow departures from precedent where necessary, or in his opinion desirable, recognising that the local Acts, especially those secured by municipalities are proper vehicles for experiment. Thus the notification of births to the Medical Officer of Health by parent or medical attendant within twenty-four hours of occurrence was allowed in Huddersfield by Local Act two years before its incorporation into the General Law by an Adoptive Act, the Lord Chairman "allowing" the clause in the Huddersfield Act, though it involved a departure from the general law, because of its use as an experiment.

The Lords' Committees and the House itself retained other constitutional rights, but they were, in all ordinary cases, and if no legislative principle of the first order were involved, exercised through the Lord Chairman or his Counsel or both. And this is still true.

The extract from "Practical Instructions" given above (p. 102) describes the relations existing between the Lord Chairman and his counsel, and Parliamentary agents to-day, almost with precision. The House Bill (*i.e.*, the Bill as proposed to be introduced into the House) is still submitted to the Chairman. It is read by his Counsel, who annotates it in ink of one colour, and re-read by the Lord Chairman, who makes his comments similarly in ink of another colour. The Bill then goes back to the agent, who subsequently returns it with his suggestions for meeting the criticisms made. If these are not satisfactory the Bill goes back again to the agent, and again returns. And this may continue for some time. The "filled-up Bill," therefore, which goes to the Committee whether of the Lords or Commons, has to-day, as in the days of Lord Walsingham, to run the gauntlet of this official examination.

Chapter IV

THE CONSTITUTIONAL ASPECT OF LOCAL ACTS

The importance of local legislation begins to be great in the eighteenth century. Much private Bill legislation was effected before the year 1700, but, in the main, it referred to matters of personal rather than of local concern, and though of great interest to the student, and often of moment to the community, it does not come within the scope of the present work. Local, as distinguished from private and personal, legislation previous to the eighteenth century, was casual and occasional. By 1710 local Acts are a regular and permanent feature of the statute book; by 1760 they outnumber the Acts of general application, and by the end of the century the preponderance of local legislation (including Enclosure and Turnpike Trust Acts) is overwhelming. Some important local Acts were passed in the reign of Charles II.[1]—for instance, those dealing with the

[1] The following are some interesting examples of still earlier Local Acts :—

1357. 31 Edw. III., c. 2. Great Yarmouth Fisheries.
1357. 31 Edw. III., c. 3. De pisce salito de Blataney.
1384. 8 Rich. II. "Pavage" at Southampton.
1421. 9 Hen. V., c. 11. Roads near Abingdon.
1477. 17 Ewd. IV., c. Paving Act, Southampton.
1487. 3 Hen. VII., c. 9 (private). Paving Act, Bristol.
1488. 4 Hen. VII., c. 3. As to killing beasts within walled towns or Cambridge.
1488. 4 Hen. VII., c. 21. An Act for the inhabitants of the town of Southwold.
1488. 4 Hen. VII., c. 22. An Act for the inhabitants of the town of Northampton.
1488. 4 Hen. VII., c. 23. An Act for the inhabitants of Leicester.
1532. 24 Hen. VIII., c. 11. Paving The Strand.
1533. 25 Hen. VIII., c. 8. Paving Holborn and Southwark.

See also Clifford, Vol. V., Ch. I., XII., etc., and Ruffhead's index to the Statutes (1772) under the heading, "Paving, Lighting, Watching, Cleansing."

cleansing and lighting of the streets of London,[1] and the North Road Act[2]; but the great body of local legislation belongs to the eighteenth century, or to later times, and is the most striking legislative accompaniment of the process of urbanisation which has been in progress for two centuries. The present chapter is an attempt to describe the constitutional character and contents of the local Acts passed between 1700 and 1800.

This mass of legislation can be considered as it affected the structure of local governing institutions by modifying those already existing, or by creating new ones, and also as affecting the functions fulfilled by these bodies.

As regards the constitutional structure of governing bodies, the local Acts of the period 1700 to 1835 formed probably the largest mass of political experiment which has ever been carried out in a particular period of time within the limits of a single State. No one who wished to create a fancy constitution could find better material for suggestion than the eighteenth century local Acts would afford. At first sight the variety of experiment is bewildering. But, though there is little cause for believing that Parliament consciously followed any definite principles in the construction of the bodies it created, or that those who desired their creation had any views of political architecture based on anything firmer than temporary and local expediency, yet, on analysis, the apparent incoherency can be made to yield some kind of order. The functions dealt with by the local Acts, though not as bewildering as the structures created, are yet sufficiently numerous. Besides the two great classes of Inclosure Acts and Turnpike Trust Acts, there are Acts dealing—always for particular localities, often for a term of years only, and frequently in widely different

[1] 13 & 14, Car. II., c. 2; 19 Car. II., c. 3; 22 Car. II., c. 12; 22 Car. II., c. 17.

[2] 15 Car. II., c. 1.

ways—with paving, lighting, watching, cleansing, sewers, nuisances, and encroachments—a most comprehensive heading—fire prevention and extinction, building regulation, street traffic, street improvements, docks, harbours, canals, river navigation, markets, theatres, regulation of all kinds including buying and selling, and the use of weights and measures, the licensing of hackney coaches, water supply, the provision of churches, the salaries of incumbents, burial grounds, local finance in almost every aspect (including loans, rates, dues, and tolls), gaols, houses of correction, municipal and county buildings, local areas, poor relief and the Poor Law administration generally; in short, all the functions of local government which already existed or arose during the period we are considering.

To describe completely all the types of political structure created by these Acts is more than space allows to be done. It is proposed, however, to describe the main types of statutory body created, and to give some examples of each type. For the purposes of classification, it will be well to take Acts applying to London and provincial Acts separately.

I.—London Poor Law Bodies

In London outside the City (*i.e.*, within the area of the present County of London, or, to use the description current in the time of which we are writing, " that part of the Metropolis which is situate within the weekly Bills of Mortality and the parishes of St. Pancras and St. Marylebone . . ."), the administration of the Poor Law was modified to a very great extent by local Acts. The parishes were populous and the original machinery of the Elizabethan Poor Law no longer sufficient. The common structural features of these Acts was that each created a body of governors and directors who, it was alleged, could relieve and employ the poor more effectually and more economically than the overseers acting

under the supervision of the Justices of the Peace could do. The bodies so created, were, in some cases, intrusted not only with the administration of the Poor Law, but also with either paving, lighting, watching, cleansing, the care of the church or burial ground, or some combination of these functions. Other bodies were concerned with Poor Law only. We may deal with these Poor Law bodies according to the constitutional classes into which they fall.

1. *Statutory Bodies, whose constitutions contain some elective element.*—Between 1700 and 1835 I have been able to find some thirty-three examples of local Acts concerned with Poor Law applying to places within the present London area whose constitutions contain some elective element; and in a large majority of these Acts the directors and guardians are to be elected either by rate-paying inhabitants or (what often amounts to the same thing) by the inhabitants in vestry assembled. For instance, in East Greenwich the Governors and Directors are to be the twenty-one "substantial and discreet persons" to be elected annually by the (open) vestry.[1] In the neighbouring parishes of St. Nicholas and St. Paul, Deptford, the acting body (which is also charged with the repair of the highways and with paving and cleansing the streets) is to consist of nine persons from each parish, elected by the parishioners, together with the churchwardens and overseers *ex-officio*.[2] The inclusion of the churchwardens and overseers *ex-officio* is usual, and the rector or vicar of the parish is often included in the acting body also.[3] In some cases where the vestry and not the inhabitants elect the acting body, it must be remembered that the vestry was a select body in the nature of a close corporation. On the other hand,

[1] 26 Geo. II., c. 100.

[2] 27 Geo. III., c. 38.

[3] See 3 Geo. III., c. 53, St. Mary, Whitechapel; 6 Geo. III., c. 100. St. Andrew, Holborn, and St. George the Martyr; 30 Geo. III., c. 80, Streatham; 31 Geo. III., c. 19, Bermondsey, etc.

there are cases where, in a parish having a select vestry, the acting body is to be elected by all inhabitant ratepayers, or by all ratepayers occupying property assessed to the Poor Rate at a certain (usually low) sum.[1]

In most cases, however, the choice of the constituency, of whichever kind, was limited by a property qualification. There are a few Acts in which no property qualification for governors and directors is prescribed;[2] but these are exceptional and only occur in the earlier Acts, disappearing after 1760. Where the electing body is either a select vestry or an open vestry with a fixed franchise (*e.g.*, consisting of all £10 householders) the elected person must be a vestryman. The qualification varies considerably. In St. Mary, Whitechapel (where vestrymen were all those paying 5s. 6d. a year to the relief of the poor), the director must be a resident rated to the poor at £3 a year.[3] In the united parishes of St. Andrew, Holborn, and St. George the Martyr, the elected governor must be assessed to the Poor Rate at not less than £20 a year. In St. James and St. John, Clerkenwell, he must either be assessed at £20 or possess £500 personal estate.[4] In Bermondsey there are three alternatives: he must either possess a freehold of the value of £50, or £500 personal estate, or be rated at £10 a year.[5]

In St. Pancras mere occupation was not a sufficient qualification; directors must own a £30 freehold, or a £30 leasehold *and* £1,000 personal estate.[6] In

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[1] St. Andrew, Holborn, and St. George the Martyr, 6 Geo. III., c. 100; St. James and St. John Clerkenwell, 15 Geo. III., c. 23; Bermondsey, 31 Geo. III., c. 19, amending Act of 31 Geo. II., above quoted; Liberty of the Rolls, 50 Geo. III., c. 84.

[2] *E.g.*, 26 Geo. II., c. 100. East Greenwich.

[3] 3 Geo. III., c. 23.

[4] 15 Geo. III., c. 23

[5] 31 Geo. III., c. 19.

[6] 44 Geo. III., c. 47.

Woolwich, however, the occupation of property rated at £10 a year was the sole qualification of this order.[1]

The elective element in the constitutions of these Poor Law bodies is occasionally provided in such a way as to afford good examples of the curious constitutions which Parliament was willing to grant to its more ingenious petitioners. In St. Pancras the local Act of 1804, already quoted, contained a provision that the Directors of the Poor should consist of the vicar, churchwardens, and overseers *ex-officio*, together with sixty persons named in the Act. These were to hold office for life, and no vacancies were to be filled until six had occurred. The remaining directors were then to fill three vacancies by co-option, and the other three were to be filled by qualified persons elected in the vestry. Besides the sixty so appointed or chosen, the Lord or Lady of the Manor was to appoint two householders as directors. Here we have the three principles of election, co-option, and nomination all recognised. And it should be noted that the lapse of time would in all probability bring into play the fourth principle of indirect election, as, when any six places were vacant surviving elected directors would have a voice in the choice of the three directors to be chosen by co-option.

Another instance of a fancy constitution is afforded by the Act obtained for the hamlet of Ratcliffe in 1810.[2] In this case the Trustees, as they are termed, are to consist of the churchwardens and overseers *ex-officio* and in the first instance, twenty-one persons named in the Act, but these are to retire at a fixed date in 1811, and, from that date onwards, twelve directors are to be annually elected by the churchwardens, overseers, and inhabitants from a list nominated by the outgoing directors. Only those persons were eligible for nomination who were householders possessed of a £40 freehold, or who occupied a £20 tenement and possessed £50 personal estate.

[1] 47 Geo. III., sess. 2, c. 3.

[2] 50 Geo. III., c. 83.

Here the constituency is popular; but its choice is limited. It may only choose from among a fixed number of persons nominated in the first instance by the directors named in the Act of Parliament; and the choice of the directors is, in turn, limited by the property qualification. Obviously so long as this provision remained in operation the influence of those who nominated the original body of Commissioners would continue, and one can conceive of the dead hand of the original petitioners being felt, though with diminishing force, until the crack of doom.

A third illustration of structural provisions which seem abnormal to the English political student of to-day may perhaps be permitted. There are some cases of the division of the governing body into classes. The body created in 1766 to administer the Poor Law, and to undertake paving, lighting, and watching in the parishes of St. Andrew, Holborn, and St. George the Martyr was partly *ex-officio* and partly elective. The *ex-officio* members were all Justices of the Peace who were householders in either of the parishes, and the rector, churchwardens, and overseers of the two parishes. Besides these *ex-officio* members, fifty persons named in the Act were to be directors until the end of the year. Then, and henceforward annually, the inhabitants of the parishes paying scot and bearing lot were to elect twenty-five "gentlemen not in trade" and twenty-five "substantial tradesmen," who, in both cases, must be assessed to the Poor's Rate at not less than £20 a year. As late as 1825, when this body was reconstituted,[1] the principle of division into classes was retained. The *ex-officio* membership remained unchanged and the rest of the new body was to be elected, as formerly, by all the ratepayers; the persons elected were to be rated at £30 a year, and were to consist of twenty-five "gentlemen" not being retailers, and twenty-five tradesmen. The notion that no one but "gentlemen" and tradesmen

[1] By 6 Geo. IV., c. 175.

could administer the local concerns of the parishes seems to have been dominant in St. Andrew, Holborn-above-the-Bars and St. George the Martyr for at least two generations.

2. *Statutory Bodies elected by, or connected with, a Select Vestry.*—The second type of constitution granted to these local statutory Poor Law bodies is that in which the directors are composed (*a*) of an *ex-officio* element, (*b*) of persons either elected by a select vestry, or by an open vestry with a fixed franchise, or the choice of whom is dependent upon or connected with a select vestry.

There are about twenty examples of Acts, applying to Metropolitan parishes containing constitutions of this type, passed between 1740 and 1830. For instance, in 1753, an Act[1] was passed for the parish of Christ-church, Middlesex, constituting a body of Governors and Directors of the Poor, who were to consist of the rector, churchwardens, and overseers of the poor, *ex-officio*, together with thirty vestrymen to be elected annually in vestry. Here the constituency was confined to those inhabitants who were vestrymen, and their choice was limited to their own number. Occasionally in these Acts we get the constitution of the select vestry itself defined. For instance, in the case of St. Botolph, Aldgate, a City parish, it was enacted[2] that the vestry was to consist of the churchwardens and overseers for the time being, and also those *residents* who had "served or fined for" the office of churchwarden or overseer and owned tenements to the value of £10 a year, and all other residents who owned a tenement to the value of £20 a year. It was this assembly of the respectable which was to elect, annually, a committee of twelve to assist the churchwardens and overseers in making regulations for the employment of the poor. In the

[1] 26 Geo. II., c. 98.

[2] 6 Geo. III., c. 64.

case of St. Sepulchre[1] the vestry itself is made authority not only for administering the Poor Law, but for the general municipal services of the parish also; the vestry consisting of all inhabitants occupying a £10 tenement, with the usual *ex-officio* members.

The parish of St. John, Wapping, affords us a very curious instance of the experimental nature of the constitutions provided by these local Acts. An Act[2] was obtained for the parish in 1782 whereby the Poor Law administration was vested in the rector, curate, churchwardens, and overseers, *ex-officio* together with twenty-five persons named in the Act. These named persons were to hold office for life, and their successors, who were to possess a low property qualification, were to be elected as occasion arose by the vestrymen of the parish. In the very next year this constitution is abandoned and one entirely opposed to it in principle is adopted. We are informed in the preamble of the Wapping Act of 1783,[3] that disturbances have arisen because the trustees hold office for life, and a new body is therefore created. It consists of the Lord Mayor and Recorder of the City of London, the presidents and treasurers of St. Bartholomew's Hospital, the Bridewell, and Bethlehem and St. Thomas's Hospitals respectively, and the rector, curate, and overseers and churchwardens of the parish, *ex-officio*, together with twenty-five vestrymen chosen annually by those *ex-officio* members. A more striking and complete reversal of the constitutional principles could hardly be imagined, and it is evident that the non-parochial *ex-officio* trustees were called in as arbitrators who might be trusted to select the trustees fairly. This system of the *ex-officio* members selecting the main body of their fellows annually from a limited class is, I believe, to be found in this Act alone.

[1] 12 Geo. III., c. 68.

[2] 22 Geo. III., c. 35.

[3] 23 Geo. III., c. 32.

Another variety of constitution was that in which the acting body consisted of the select vestry itself together with a fixed number of additional members chosen by the vestry. The Act passed in 1786 for the parish of St. John, Southwark,[1] is an example of this, for the Governors and Directors of the poor were to consist of the churchwardens, overseers, and vestrymen of the parish together with ten persons to be chosen by them. The 1810 Act regulating the Poor Law Authority for the parish of St. John at Hackney[2] (which was one of the London parishes in which a select vestry ruled on what proved to be the insufficient authority of a seventeenth century Bishop's Faculty) introduces an unusual constitutional feature. In this case the trustees for the poor are to consist of the rector, vicar, churchwardens, and overseers of the parish together with seventy-two persons to be elected by the vestrymen and co-vestrymen from among their number. The co-vestrymen are inhabitant householders rated at £40 per annum. Here, it is evident, was a case in which it was thought prudent to associate all "substantial" inhabitants with the exclusive coterie of vestrymen in the ultimate control of the Poor Law administration.

It is noteworthy that the lapse of time seems to have had no effect on the ease with which Acts of this character, vesting the control of by far the most expensive function of local government of the time in the hands of unrepresentative bodies like select vestries, were obtained. The curiously constituted Wapping Trustees—a body which, at all events according to the letter of the law, was chosen by a set of office-holders, having little to do with the parish, out of a select body of parishioners—were given additional powers as late as 1819.[3]

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[1] 26 Geo. III., c. 114.

[2] 50 Geo. III., c. 190.

[3] 59 Geo. III., c. 15.

3. *Statutory Bodies having ex-officio and co-opted members only.*—The third variety of Metropolitan Poor Law Authority presents an even greater contrast to the democratic constitutions of the present day. Towards the end of the eighteenth century a number of bodies were created, in connection with the Poor Law administration, which contained no elective element at all. They consisted entirely of *ex-officio* members, together with a number of persons named in the Act, this body having power to fill all vacancies by co-option. Two of the earliest of such bodies had jurisdiction in the liberty of Saffron Hill, Hatton Garden, and Ely Rents, and in the parish of St. Andrew, Holborn;[1] but in these cases the body is empowered to build or purchase a workhouse only. Bodies having a strictly limited function of this kind were probably originally nominated by the vestries, and must be regarded merely as an expedient adopted by the existing Poor Law Authority for getting a particular piece of work accomplished. But this is not the case with the parish of St. Mary, Islington, where by an Act passed in 1777[2] the control of the Poor Law administration was vested in a body which consisted of the vicar, churchwardens, overseers of the poor, *ex-officio*, with fifty persons named in the Act. All vacancies in this body were to be filled by co-option, the only restriction being that those so chosen must either occupy premises, in the parish, rated at £30, *or* must be the owners of personal estate to the value of £1,000. Similar Acts were obtained for the Old Artillery Ground,[3] Mile End,[4] Hampstead,[5] and St. Pancras.[6] In the cases of the old Artillery Ground and Mile End, the Acts quoted also brought into existence

[1] 10 Geo. III., c. 79. Sec. 10 Geo. II., c. 80.
[2] 17 Geo. III., c. 5.
[3] 14 Geo. III., c. 30.
[4] 20 Geo. III., c. 66.
[5] 39 and 40 Geo. III., c. 35.
[6] 45 Geo. III., c. 99.

bodies of precisely similar constitution to manage the paving, cleansing, lighting, and watching of the parish and to suppress nuisances therein.[1] In the other parishes the bodies were concerned with the Poor Law only. It will be gathered from these examples, therefore, that Parliament was, at the end of the eighteenth and the beginning of the nineteenth centuries, willing to place practically the whole local administration of a London parish into the hands of a " self-chosen " body.

Ostensibly, at least, however, financial control in some cases remained or was vested in the parishioners at large. In the case of the old Artillery Ground the power to levy the Poor Rate was vested in the overseers and inhabitants, and only in their default was the rate leviable by the trustees themselves. Similar conditions obtained in Islington and Mile End, though in the latter the rate leviable by the inhabitants themselves was limited to 1s. 6d. in the £ on houses of £12 and less annual value, 3s. in the £ on property of £12 and less than £20, and 4s. in the £ on property of £20 a year and over in value, an early and interesting example of graduated local taxation.

In the case of St. Pancras the " self-chosen " body of directors were empowered to levy unlimited rates for all ordinary purposes, as well as to make a special rate not exceeding 4d. in the £ per annum as a security for the money they were empowered, by the same Act, to borrow. Further, it should be remarked that both in the old Artillery Ground and in Mile End the rate for paving, lighing, watching, and the like (though limited in amount) was leviable directly by the Commissioners themselves. So far had Parliament departed from the principle of " no taxation without representation " almost before the sound of the guns of Yorktown and Saratoga had died away.

Before leaving this part of our subject it is worth

[1] A co-optive element was added to the existing administrative body in Christchurch, Middlesex, by 37 Geo. III., c. 79.

while to note the existence of a fourth type of constitution. Among the London Poor Law bodies there were created two in which the acting bodies were to consist of: (1) *Ex-officio* or named persons; (2) all parishioners answering to a certain property qualification; (3) an elected element. Thus in the Act creating a body of trustees of the poor for the parish of St. Leonard, Shoreditch,[1] the trustees were to consist of 177 persons named in the Act, and all persons possessing £40 freehold in the parish; and, when vacancies occurred, half were to be filled by co-option, and half by the votes of the parishioners in vestry assembled. Again in the Act obtained for Poplar in 1813[2] it was prescribed that the Poor Law Authority should consist of *ex-officio* members (the churchwardens, ex-churchwardens, and overseers, representatives of the dock interests, and of the Corporation of London as port authority), all householders rated at £30 a year, and all owners of leaseholds to the value of £50, together with ten persons elected by the inhabitants.

This type of constitution is to be found also in the Poor Law Authorities formed in the County of Suffolk and elsewhere in the last third of the eighteenth century. It would seem an attempt to balance the rights of property with the rights of man, an attempt, as we shall show, not frequently visible in the local constitutions here under examination.

II.—Provincial Poor Law Statutory Bodies

In the provinces the number of bodies created by local Act to administer the Poor Law was comparatively small. Nor do the bodies so constituted present the same diversity of structure as the Metropolitan Poor Law Authorities did, for in almost every case they are mainly elective in character. The qualification of the electors, and the methods of election vary considerably,

[1] 14 Geo. III., c. 29.

[2] 53 Geo. III., c. 84.

but in no case that I have discovered is there a body which could be described as predominantly co-optive in its constitution. In most cases there is the usual *ex-officio* element, the rector or vicar, and the churchwardens and overseers of the parish, sometimes the resident Justices of the Peace, and, what is a marked feature of the Acts applying to rural areas, the Lords of Manors. But, to these a large elective element, chosen by a constituency usually of a democratic type, is annexed. The franchise is generally extended to all occupiers within the parish rated to the poor at a comparatively low annual value, and those elected, as a rule, have to possess some property qualification.

These limits to the operation of democratic principles were to be expected, especially as the adoption of those principles has, in some respects at least, been slower in local than in national government.

In the parish of Richmond, Surrey, besides the *ex-officio* members, the trustees for the poor consisted of thirty-one persons named in the Act. Five of these chosen by lot were to retire annually, and their successors (who must have possessed £5 freehold or a £10 leasehold) were to be elected by the inhabitants.[1]

In 1785 another Act applying to Richmond was obtained, and the franchise was narrowed down to those inhabitants occupying a tenement of the annual value of £12, and the property qualification for trustees was raised to the possession of a freehold or leasehold tenement worth £20 a year.[2] In Birmingham the governing body constituted by the local Act of 1783 consisted of 108 "fit and substantial" persons to be elected every three years by inhabitants rated at £10 a year and upwards. Another Act was obtained for Birmingham in 1831, but democratic forces were at work in that place and at that time, and only slight constitutional changes of a limiting nature are exacted,

[1] 6 Geo. III., c. 72.
[2] 25 Geo. III., c. 41.

the only alterations being that the franchise qualification was raised from a £10 to a £12 occupancy, and the "fit and substantial" Guardian of the earlier Act is now more definitely described as a parishioner occupying a £20 tenement.

The elective element is retained even in small country parishes like Highworth and Aldbourne in Wilts. At Highworth, when the original number of trustees (who included the usual *ex-officio* members, the stewards of the two local Lords of Manors) was reduced to thirty-one, vacancies occurring were to be filled by election, all inhabitants rated to the poor at £5 a year being qualified to vote.[1] At Aldbourne the franchise was the same.[2] The Aldbourne Act contained the somewhat curious provision that four of the original trustees named in the Act were to hold office for life whether resident or not.

Where the local Act provided for the creation of a statutory body to be entrusted with the Poor Law administration for a group of parishes the constitution had to be varied. For instance, in an Act passed in 1806 and applying to nine Norfolk parishes,[3] the guardians of the poor were to consist of one person from each parish chosen by the Justices of the Peace from a list of three persons selected by the parishioners, of parishes respectively, who were rated at £5 per annum. Three of the guardians so chosen were to retire annually, and their successors were to be elected in a similar way. The administration of these guardians was, however, to be supervised by a body of visitors similarly chosen.

In the case of a union of certain Derbyshire parishes,[4] however, direct election is retained; but there is, again,

[1] 29 Geo. III., c. 29.

[2] 40 Geo. III., c. 48.

[3] 46 Geo. III., c. 44.

[4] Shardlow, Milne, etc. 56 Geo. III., c. 66.

an administrative and a supervisory body. The former, called the Guardians, were to consist of one person from each parish or township, chosen by all occupiers of lands or tenements within the parish. The supervisory body (called the Directors) consisted of a similar number of persons similarly chosen. Moreover, there were to be two visitors chosen by the Justices of the Peace from a list of three persons presented to them by the guardians. A remarkable feature of this Act was that it provided for the payment of the guardians provided they individually satisfied the directors and visitors of their efficiency. The operative clause is worth quotation: "Be it enacted that every person faithfully and diligently and to the satisfaction of the Visitor or Directors executing the office of Guardian, shall have, as a remuneration for his care and trouble, such a sum of money as will be equal to $2\frac{1}{2}$ per cent. upon the amount of the Poor Rates for the parish or place for which he shall so serve." It must be carefully noted that the guardians who are thus to take a percentage of the rates are not overseers or officials of any kind under any guise. They are collectively a representative body having power to administer the workhouse, to make necessary bye-laws, punish and reward the poor, apprentice children, and levy rates. This is just one instance, out of many, of the way in which precedents for measures advocated by contemporary reformers may be found in the local statutes of the period with which we are dealing.

The examples given, though their number might be considerably increased, are a representative sample of the local Acts dealing with Poor Law administration. We may therefore proceed to sum up the main constitutional characteristics of the Acts of this type, *i.e.*, those dealing with the Poor Law, whether applying to a provincial or a metropolitan area.

1. *The Administrative Unit.*—We may notice that the parish is invariably the unit of area, every Act

applying to a single parish or to an union of parishes.[1]

2. *Structural Character.*—The bodies created, as already noted, are, in a majority of cases, elective, the franchise being in many cases a wide one, and this is almost invariably the case with provincial bodies. Some metropolitan authorities, though elective in character, are chosen by a selected body (usually the select vestry only); and, in a limited number of cases confined to the metropolis, the constitution of the Poor Law body created by the local Act contains no elective element at all, being mainly co-optive in character. Finally, in almost all the Acts, whether the elective element predominates or not, there is a provision for an *ex-officio* element, the offices most commonly carrying a seat on the local Poor Law Authority being the incumbency of a parish, churchwarden and overseer, Justice of the Peace, and, in some districts, Lord or Lady of the Manor.

3. It is to be noticed that Acts passed late in our period show no greater democratic tendency than those of a comparatively early date.

It was to be expected that in local legislation of the character we are considering the parish should have been retained as the administrative unit of area. The manor, as a unit of local government, though not entirely obsolete, was in a moribund condition, and in all general legislation relating to the poor and the highways, the parish had been preferred. Unless a trained official class were brought into existence, a consummation not generally thought of or desired in the eighteenth century, a county Poor Law Authority was impossible. The old area, therefore, was, in most cases, retained.

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[1] There is an interesting Act passed in 1769, "An Act for the more effectual relief of the poor in the county of Devon," which applied to a county, but this Act did not deal with the administration of the Poor Law, but provided legal machinery for continuing Friendly Societies rendered illegal by existing Combination Acts. It is an interesting relic of an experiment in the State administration of such voluntary societies.

Where a larger area was considered desirable it was obtained by the union of two or more parishes.[1]

As to the character of the constitutions created by these Acts, we shall see that the predominance of the elective element in them, especially in the case of Acts applying to provincial areas, is not repeated in the much larger body of legislation relating to town regulation and improvement and to turnpike trusts, which was contemporaneously being enacted.

[1] Gilbert's Act, c. 33, 22 Geo. III., 1782, gave power to adjacent parishes to form sessions and provide common workhouses for the unions. Sixty-seven such unions were formed.

Chapter IV.—(*Continued*)

III.—Street Authorities

(*a*) *Constitutions containing some Elective Element*

Important as was the influence of local Acts in determining the structure of bodies administering the Poor Law, yet, except in London, the Elizabethan structure remained, in general, unaltered. During the whole of the eighteenth century, however, the most obvious of the functions of urban local government to-day, the paving, lighting, cleansing of the streets, and the provision of a police force, remained unprovided for by any public legislation applying to the country as a whole. Any community, therefore, in which the provision of these services had become urgent, was compelled to obtain by private Bill legislation the authority required.

It was for this reason that one of the most numerous, and perhaps one of the most important kinds of local Acts, was that conferring power to pave, light, cleanse, and watch some defined locality. The powers conferred by these Acts were by no means confined to the foregoing functions alone; but the provisions relating to them form, in a majority of cases, the main body of the local Acts, they were usually known as paving, lighting, and watching Acts,[1] and we shall call the bodies they created or reinforced "Street Authorities."

[1] These functions are most prominent in the short titles: *e.g.*, 10 Geo. II., c. 6: An Act for better repairing and paving the highways and streets within the City of New Sarum, and for enlightening the streets, etc., and better regulating the nightly watch (1726); 58 Geo. III., c. 54: An Act for cleansing, lighting, watching, and otherwise improving the town of Sheffield in the county of York (1818); 2 and 3 Wm. IV., c. 106: An Act for better paving, lighting, watching, cleansing, and otherwise improving the City of Exeter, and county of the same City (1832).

As will be shown later, such Acts, with the progress of time, contained, in increasingly numerous cases, power authorising the acting body to provide sewers, suppress nuisances, improve streets, and exercise a very extensive regulating authority especially as to the use of the streets.

The Acts for creating street authorities differ from the Acts relating to Poor Law administration in respect of the areas selected. In London, the unit of area, as in the case of the Poor Law Authority, is very often the parish, but even in London, the block of streets forming the estate of a single person,[1] or a single square,[2] is not infrequently the area dealt with. In the provinces the area legislated for is that of a city, or borough, or an unincorporate "town." These areas might be coincident with a single parish, or a group of parishes, or an aggregation of parishes, or might cut through parochial boundaries. Though whether the area selected, even in unincorporate towns, was coincident with a parish or a group of parishes or not, the unit was a municipal and not a parochial unit.

Another difference was that whilst the Poor Law local Acts in some cases applied to rural areas, these street authorities, for obvious reasons, were created for urban areas alone.[3]

The constitutional features of these bodies admit of the same classification as that adopted for the Poor Law Authorities. These street authorities were either predominantly elective, or co-optative, or they consisted of the whole of a defined class, or were predominantly *ex-officio* bodies. As a rule more than one of these structural elements is present in each case, and, in particular, few bodies were created without any *ex-officio* element at all. But whilst the majority of the Poor

[1] See 41 Geo. III., c. 31, Southampton Estate.

[2] 31 Geo. III., c. 90, Finsbury Square.

[3] There appear to be one or two exceptions to this rule.

Law Authorities contained some more or less popularly elected element, we shall find that, in a majority of cases, most of the street authorities were without any elective element at all. Between 1700 and 1835 about a hundred Acts creating or applying to street authorities were passed which contained some elective element.[1] During the same period some two hundred and thirty Acts were passed which contained no elective element of any kind, and of this majority the larger number were predominantly co-optative in structure.

As there is some *ex-officio* element in nearly every one of these constitutions, and as few of them can be described as predominantly *ex-officio* in character, we shall consider, in order, three classes of constitutions only:—

I. Those containing some elective element.

II. Those in which the co-optative element is predominant.

III. Those in which the acting body consists of the whole body of some defined class of people.

We shall afterwards describe some of those quite few anomalous constitutions which do not fall into the above classification.

(*a*) The Acts which made provision for the election of the bodies of Street Commissioners did so in very different ways. The qualification for a vote, or for a seat, the duration of membership differ considerably from case to case.

Franchise. On the whole, although Acts in which an elective element is present are a minority of the Acts passed, yet in a large majority of those containing such a provision, the franchise is very wide. The following is the result of an examination of the franchise clauses of these Acts:—

[1] Not necessarily, it will be observed, a predominantly elective element.

Who might vote.	London.		Provinces.	
All "Inhabitants"	10		13	
All Ratepayers	5		18	
Members of Vestry (*)	8	25	8	39
All Owners and all Occupiers ...	2		0	
Occupants of Tenements assessed at :				
£5 a year or more	0		3	
£10 „ „	1		5	
£16 „ „	0	2	1	16
£20 „ „	0		5	
£30 „ „	1		1	
£50 „ „	0		1	
Payments of Rates amounting to 10/- a year...	1			
TOTAL	28		55	

* This would in most cases include all ratepaying inhabitants. But in four cases (London) the vestry was a select vestry at the time of passing the Act, most of the provincial vestries having the power to elect Commissioners were open vestries, but some of them may have been select.

It will be seen that in London, residence,[1] coupled with the payment of rates, was the commonest qualification, and the same was true of the provinces. In the provinces, however, the occupancy franchise was as a rule higher than in the Metropolis. The five cases in which the qualification for a vote is the occupancy of premises assessed at £20 occur at Brighton (two Acts), Worthing, Hove, and St. Leonards. This is one of a number of cases in which we find the provisions of local Acts applying to neighbouring, or similar towns, sympathetic in their provisions. Curiously enough, at Hastings the qualification for a vote for the Commissions is the occupancy of a £5 tenement. The case where the qualification is a £50 occupancy is Little Bolton, and this provides us with an instance of one of the few attempts to apportion voting power to property.

[1] Probably to be construed the occupation of a dwelling-house.

Only those occupying property to the value of £50 a year or more might vote at all; but each person so qualified was to have one vote for each £25 of the annual value of his occupancy, provided that no one was to have more than six votes.[1] The only other case of the kind in this series of Acts is the Dover Act[2] of the same year (1830). In this instance all the ratepayers occupying a tenement of less than £50 in annual value were to have one vote (Dover in this respect being more democratic than Bolton), but those whose occupancy was of premises to the value of £50 or more were to have one vote for each £25 in annual value of the property occupied, provided that no person had more than six votes. The system of plural voting upon a property basis does not occur in this series of Acts before 1830, but in 1818 it was adopted in Sturges Bourne's Act; and the Public Health Act, 1848, was based upon this principle.

Another curious franchise qualification may be mentioned. The vote for the election of trustees under an Act obtained for Whitehaven in 1762[3] was confined to inhabitants who owned not less than one-sixteenth of a ship. These trustees, however, were not only entrusted with the lighting and water supply of the town, but had charge of docks and other harbour works, and their funds were to be obtained not by rates on landed property, but by tolls on the passage of ships and dues on goods. The omission of the non-shipowning inhabitants is therefore intelligible. In the case of the Maryport Act of 1833[4] the franchise was extended to all the inhabitants rated at £6 a year *or* possessing certain fractions of the ship.[5] In this case the trustees could

[1] 11 Geo. IV., c. 46.

[2] 11 Geo. IV., c. 117.

[3] 2 Geo. II., c. 87.

[4] 3 and 4 Wm. IV., c. 117.

[5] Quarter of a vessel of 50 tons and less than 100 tons; one-eighth of a vessel of 100 tons and less than 200 tons; one-sixteenth of a vessel of 200 tons and over.

impose a tonnage duty on shipping and also levy a rate. Taxation and representation were, therefore, again correlated.

While, in these Acts, the right to vote was democratically distributed, we find that the freedom of the voter to choose his representative was, in general, somewhat strictly limited. In a large majority of cases the possession of property, or the occupation of premises of a defined annual value, or both, was essential to membership of the acting bodies constituted by these local Acts. Of ninety-three Acts examined, only eighteen[1] do not contain some limiting condition of this kind. The commonest form which this property qualification takes is that which prescribes that every commissioner or trustee shall possess freehold, copyhold, or leasehold property to a certain *annual* value, or possess personal property of a fixed capital value. For instance, in the case of the Southampton Estate, in the parish of St. Pancras, the Act prescribes that the elected persons must each possess freeholds to the annual value of £40 at least, or leaseholds worth £50 a year, or £2,000 personal estate.[2] In three cases (all central London areas) there was no discrimination as to the kind of property held. The qualification was in each case the possession of £2,000 of real or personal property.[3]

Another variety of qualification was that in which occupancy of property to a fixed minimum annual value was added to ownership as an essential qualification. A good instance of this is the York Act of 1825,[4] which provided that every commissioner must possess either

[1] Nine of these are Metropolitan Acts, and nine Provincial Acts. The number includes four cases (all Metropolitan), in which it is provided that the Commissioners must be householders, but in which the annual value of the house held was not prescribed.

[2] 41 Geo. III., c. 131.

[3] The three areas are: St. Paul, Covent Garden, 23 Geo. III., c. 42; St. Anne, Soho, 23 Geo. III., c. 43; St. Andrew, Holborn, and St. George the Martyr, 2 Wm., IV., c. 66.

[4] 6 Geo. IV., c. 127.

freeholds or leasehold to the annual value of £60, or £2,000 personal property *and* occupy premises within the area of administration or the value of £20 a year. A larger class is that in which occupancy and ownership are alternatives, as, for instance, in the case of Sheffield, where the commissioner had to be a £20 householder *or* possess a £1,000 personal estate,[1] or Exeter, where the commissioner must occupy a house rated at £40 a year, or possess a £50 freehold or £2,000 personal estate. Finally a number of Acts were passed in which occupancy of property having a fixed annual value was the sole qualification, *e.g.*, the New Sarum Act of 1815,[2] or, to take a Metropolitan example, the Mile End Act of 1777.[3]

The above are the principal classes of property qualifications, but some less common varieties may be mentioned. In a few instances the possession of real property is the sole condition of eligibility for election.[4] And where the possession of real property is one of a number of alternative qualifications, the heirship to freeholds (usually of a higher value) is not infrequently one of the alternatives.[5] There are also cases where occupation of property to a lower annual value, accompanied by ownership of property to a fixed amount, is made the alternative to occupation of property to a higher annual value.[6]

It cannot be said that in respect of property qualification for membership the Acts became more democratic in tendency as time went on. All the Acts which either

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[1] 58 Geo. III., c. 54.

[2] 55 Geo. III., c. 25.

[3] 17 Geo. III., c. 66.

[4] Bath Act, 1766, 6 Geo. III., c. 70; Lincoln Act, 1791, 6 Geo. III., c. 70; Worthing Act, 1821, 1 and 2 Geo. IV., c. 59.

[5] See Barnstaple Act, 1811, 51 Geo. III., c. 154; Romford Act, 1819, 59 Geo. III., c. 75; Banbury Act, 1825, 6 Geo. IV., c. 130. This kind of qualification is frequent in the constitution of Turnpike Trusts, and was probably imitated from them.

[6] See Kensington High Street Act, 1795, 35 Geo. III., c. 74.

contained no provision for any membership qualification at all, or which rendered all inhabitants or all householders of the district to which they applied eligible, occurred, with two exceptions,[1] before 1800. Nor did the property qualifications show any tendency towards reduction. On the whole the qualifications inserted after 1800 are higher than those inserted before that date. This may have been, and probably was, a reflection, in this "parish pump" legislation, of the general arrest of democratic ideas which was a political characteristic of the period between 1790 and 1820, if not later. But it is significant that this unusual imposition of property qualifications should have synchronised with the date at which the supervision of the Lord Chairman of Committees became a formally recognised and permanent feature of private Bill procedure.[2]

If the universality of the property or occupation qualification in these "elective" Acts was due to the supervision of the Lord Chairman, he must have allowed considerable weight to the predilections of the local promoters or the draftsmen. For the varieties of qualification which we have mentioned are all to be found after his jurisdiction was settled. Moreover, Acts passed in the same year exhibit the widest variation. The legislation of the year 1825 illustrates the want of uniformity which is one of the most characteristic features not merely of the qualifications we are now considering, but of almost every feature of local legislation during our period. Brighton, Chesterfield, Walcot (a suburb of Bath), York, Banbury, Sudbury (Suffolk), and Stroud, all obtained "Street Acts" in this year. No two of them have the same qualification; and one fails to discover an intelligent particularism in any

[1] Holborn, 1819. St. George, Hanover Square, 1826; both cases in which owing to the character of the neighbourhood a property qualification would have been almost supererogatory.

[2] See *supra*, chap. III.

endeavour to fit qualification to locality. A glance at the following table will make this clear:—

Town.	Reference.	Qualification for Membership of Street Authority.
Brighton ...	6 Geo. IV., c. 179	Householder having occupation of £50 tenement, and owning £50 freehold or copyhold. Or having occupation of £30 tenement, and £70 freehold or copyhold.
Chesterfield ...	6 Geo. IV., c. 77	Occupation or ownership of £15 tenement.
Walcot ...	6 Geo. IV., c. 79	Ownership of £150 freehold, leasehold or copyhold, or £4,000 personal estate.
York... ...	6 Geo. IV., c. 127	Occupation of £20 tenement within the City of Liberties, *and* ownership of £160 freehold or leasehold, or ownership of £2,000 personal estate.
Banbury ...	6 Geo. IV., c. 130	*Without the Borough.* Ownership of £50 tenement for life, or 99 years, or £1,500 personal estate. *Within the Borough.* Ownership of £30 tenement for life, or 99 years, or heir to £200 tenement.
Sudbury ...	6 Geo. IV., c. 70	Ownership of £20 tenement within the Borough, or of £500 real or personal property.
Stroud ...	6 Geo. IV., c. 6	Ownership of £100 tenement, or heirship to £150 tenement, or ownership of £3,000 real or personal estate.

Walcot, it is true, was a suburb of Bath; but why the qualifications for the honour of superintending the paving, lighting, cleansing of its streets should have been so much more strictly guarded than at Brighton, is not very clear. The Royal feet were as likely to tread the pavement of Brighton as of Bath. But if we put these two resorts of fashion into a class by themselves, there still remain the questions why the qualification should be higher in Stroud than in Sudbury, in Banbury than Chesterfield? The only possible explanation seems to be that provided a property qualification of some sort were inserted, a large latitude was allowed to promoters; and the qualifications are the reflection of the ideas of those influential people in the towns, chiefly property

owners or their agents, who successfully petitioned for the legislation we are considering.

Every property qualification is, at least by implication, a disqualification. There are in these Acts, cases of such disqualifications being augmented with regard to certain classes of the population. For instance, in the Manchester Act of 1828,[1] such disqualification was applied both to the franchise and membership. Whilst the ordinary occupier had a vote if his tenement were valued at £16 a year, no publican could vote who occupied property worth less than £32 a year; and, similarly, to be eligible for membership of the Street Commission, the publican was to occupy a £56 tenement, though all the occupiers of £28 tenements were eligible.[2]

It will not be forgotten that the elected members of those Street Authorities which had an elective element at all were usually associated with others who did not owe their position to any form of popular choice. Not only was the constituent body, however popularly constituted, restricted by the property or occupations which those elected must possess, but, in hardly any instance, did they choose the whole body of commissioners.

The principal element found side by side with the elective element was membership *ex-officio*. The most numerous class of *ex-officio* members was that supplied in corporate towns by the governing body of the municipal corporation or some portion of it. In the eighteenth and early nineteenth centuries the corporation was looked upon as a body providing, at least in large centres, a dignified figurehead for public occasions, possessing various regulative powers which had become, or were rapidly becoming, entirely obsolete, often administering justices' justice of the urban variety, maintaining a small and usually loathsome gaol, managing corporation property (often including a Parliamentary

[1] 9 Geo. IV., c. 117.

[2] In Sculcoates no publican was eligible. But the constitution in this case contained no elective element. See 41 Geo. III., c. 30.

seat) or distributing, legitimately or corruptly, the *corpus* or the *usufruct* of that property. That the governing body of a corporation, especially in cases where the burgesses formed only a more or less numerous minority of the male adult population, should or could be trusted alone to pave, light, watch, and cleanse the town and levy and collect rates for those purposes was an idea which neither burgess nor non-burgess would often generate, and of which, if generated, the life would be short and uneasy. Thus we find that it is only in very exceptional cases that the authority over streets was vested by statute in the corporations whose common law powers over the streets were scanty, indefinite, and, as a rule, unenforceable. The reader may be reminded that under the Elizabethan Poor Law, even in cities and boroughs, the municipal authority had been almost[1] entirely passed over, and the parochial administrative organisation adopted. That, at a later date, when the functions of the corporation were almost completely atrophied, new powers should have been conferred on new authorities is, therefore, hardly surprising.

Nevertheless, the historic position, the Parliamentary influence, in many cases, the personnel of the town council, made it natural that the corporation should be represented *ex-officio* upon the Street Commission, and we find that in almost all corporate towns such representation was given. The rule was that the Mayor, Recorder, and Aldermen or Justices of the Peace were, by virtue of their office, members of the commission. In a smaller number of cases the whole Common Council (or other acting body of the corporation) figure *ex-officio* in the local Street Act. In a few exceptional cases the corporation, as such, is entirely unrepresented.[2]

[1] Where there were borough justices (*i.e.*, usually the Aldermen or some of them) they had the same power of supervision as had the county justices.

[2] *Street Commissioners partly elected, partly ex-officio*: (*a*) Cases in which *Mayor, Recorder*, if any, and *Aldermen or Justices* were *ex-officio*,

Where the corporation is represented the High Steward, the Deputy Mayor, or the Town Clerk are sometimes given seats *ex-officio*.

In unincorporate places, however, the *ex-officio* element was not so universal a feature of this class of Acts as it was in Acts dealing with the Poor Law. In fact if we except the corporate towns the *ex-officio* element was frequently altogether absent; and, when present, it was made up in very different ways. Nearly half the Street Acts which applied to the London area (where, of course, there could be no corporation represented *ex-officio*) contain no provision for *ex-officio* representation. Where, in London, there was an *ex-officio* element, since the parish was the general unit of area, it follows that that element would usually be supplied by the vicar, churchwardens, and overseers, or some of these. In some Acts the vicar alone is the *ex-officio* member;[1] in others the rector or vicar and churchwardens;[2] in others the overseers of the poor are also added;[3] while in one case, the churchwardens and overseers are included and the incumbent omitted.[4]

A common constitutional feature of Road Acts is imitated in an Act of 1804 and the Members of

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paving, etc., Commissioners, with date of Local Act: New Sarum, 1736, 1815; Liverpool, 1748, etc.; Leeds, 1755, etc.; Poole, 1756; Chester, 1762; Oxford, 1771; Canterbury, 1788, 1794; Lincoln, 1791, 1820; Chipping Wycombe, 1813; Bath, 1814; Newport (Mon.), 1826; Carlisle, 1827; Gravesend, 1833; Cambridge, 1788, 1794. (*b*) Cases in which *whole acting body of Corporation* were members of Street Authority: Liverpool, 1762; Bath, 1766; Plymouth, 1772; Exeter, 1810; Barnstaple, 1811; Dover, 1830. (*c*) Cases in which Corporation seems to have been entirely unrepresented: Sheffield, 1818; Leeds, 1824; York, 1825; Dorchester, 1834. Portreeves and Bailiffs have been treated as Mayors; Jurats as Aldermen.

[1] See 23 Geo. III., c. 43, St. Paul, Covent Garden; 23 Geo. III., c. 89, St. Clement, Danes; 31 Geo. III., c. 90, Finsbury Square; 54 Geo. III., c. 213, Camberwell.

[2] See 22 Geo. III., c. 50, St. Leonard, Shoreditch; 23 Geo. III., c. 43, St. Anne, Soho.

[3] See 17 Geo. III., c. 66, Mile End Old Town; 5 Geo. IV., c. 125, St. Mary, Islington.

[4] 29 Geo. II., c. 53, Marylebone.

Parliament for the county made *ex-officio* commissioners.[1] In Bermondsey all resident Justices of the Peace were included.[2] Where the Acts are applicable to particular estates only, as was the case, when, very early in the nineteenth century, the parish of St. Pancras was being developed, the owners of the freehold were sometimes included as *ex-officio* members of the street authorities.[3]

There were some of the cases of *ex-officio* representation occurring in London which do not fall into the classification just outlined. There is generally some local reason for such cases. For instance, in the street authority erected in 1769 for the precinct of St. Martin le Grand, its connection with the collegiate church of Westminster and the manorial organisation of Westminster are apparent; for the Dean of Westminster, and the High Steward and Deputy Steward of Westminster and St. Martin le Grande, as well as the head borough of St. Martin's are all appointed commissioners *ex-officio*. In this case, too, all resident Justices of the Peace are included in the list of commissioners.[4] Similarly in the Act applying to Goswell Street[5] the Master, Preacher, Receiver, and Registrar of the hospital of St. James are given *ex-officio* seats on the commission; and when Finsbury Square needs paving, lighting, watching, and cleansing, the rights of property are safeguarded by the inclusion, *ex-officio*, among the trustees, of the Chairman of the Committee for letting the lands of the City of London and the Comptroller of the Chamber of the said city.[6]

As we have already noticed the *ex-officio* element in corporate towns is supplied by the representation of the

[1] 44 Geo. III., c. 53, St. Nicholas, Deptford.

[2] 4 and 5 Wm. IV., c. 95.

[3] 41 Geo. III., c. 31, Southampton Estate; 5 Geo. IV., c. 70, Battle Bridge.

[4] 9 Geo. III., c. 13.

[5] 20 Geo. III., c. 48.

[6] 31 Geo. III., c. 90,

corporation *ex-officio*. The majority of provincial towns which obtained Street Acts in the eighteenth century were corporate towns. Consequently the predominant variety of *ex-officio* representation, in the provinces, is that composed of mayors, recorders, aldermen, borough justices, and the like, with occasional high stewards and town clerks.

In the case of at least half the unincorporate towns for which Acts were obtained there is no *ex-officio* element at all.[1]

In those Acts which did provide for an *ex-officio* element in the constitution created by them the ecclesiastical element was not so characteristic as in the London Acts for the simple reason that the Acts were obtained not for parishes but for towns. And, even when the town area coincided with that of a single parish, the promotion of the Act was evidently regarded not as a parochial, but as a municipal, affair. Consequently, we find the rector, or vicar, figuring in only a few of the Acts, and, usually, not in a distinguished solitude, but together with other *ex-officio* members.[2] The other *ex-officio* elements which we have already noted in the London Acts occur. The borough or county Members of Parliament[3] and the resident justices of the peace[4] are sometimes given *ex-officio* seats.

At Knaresborough,[5] and Clifton,[6] and Romford,[7] the

[1] *E.g.*, it is not to be found in Acts obtained for: Worthing, 1821; Brighton, 1825; Walcot, 1825; Banbury, 1825; Sudbury, 1825; Sheerness, 1829; Kington, 1829; Hastings, 1832; St. Leonards, 1832; Herne, 1832; Dorchester, 1834. The late date of most of these Acts is to be accounted for by the fact that until the close of the eighteenth century it was almost exclusively the older corporate towns which obtained local Acts.

[2] 51 Geo. III., c. 154, Barnstaple; 6 Geo. IV., c. 6, Stroud, etc.; but in some provincial cases the vicar is the only *ex-officio* member. Croydon, 1829; Gravesend, 1833.

[3] 51, Geo. III., c. 154, *infra*; 27 Geo. III., c. 14, Canterbury, etc.; 7 Geo. IV., c. 6, Newport.

[4] 10 Geo. IV., c. 6, Duddeston and Nechells; 4 Wm. IV., c. 47, Chippenham, etc.

[5] 4 Geo. IV., c. 35.

[6] 5 Geo. IV., c. 124.

[7] 59 Geo. III., c. 75.

Surveyors of Highways are included, the fact that they belonged to the parochial and not to the municipal organisation probably accounting for their rare appearance in these new constitutions.

In some cases, where the manorial organisations had survived in a more or less vigorous condition, or where the Lord of the Manor had valuable rights to safeguard, we find that manorial representatives figure, *ex-officio*, as street commissioners or trustees. Thus at Whitehaven, where the trustees created by the local Act[1] had not only to light the town and supply it with water, but had the general supervision of the harbour and construction of docks entrusted to them, the Lord of the Manor was a trustee *ex-officio* and had the power to nominate six other trustees.[2] In the Brighton Act of 1810,[3] besides the Members of Parliament for the County of Sussex and all boroughs in that county, the Lord of the Manor of Brighthelmstone and three other adjoining manors were *ex-officio* commissioners, as well as the High Constable.[4] The survival of manorial forms of local government in Lancashire finds its reflection in the Acts relating to Manchester and its neighbourhood. In the Act relating to both Manchester and Salford, passed in 1828,[5] the Borough-Reeve and constables for each town were included *ex-officio*, and when, in 1830, each town obtained a separate Act,[6] these officers were, in both cases, again included. Similarly the Borough-Reeve is a trustee *ex-officio* for the

[1] 2 Geo. III., c. 87.

[2] This is one of the few instances of nomination to be found in this series of Acts. See also the Maryport Act of 1833, 3 and 4 Wm. IV., c. 113, which was modelled on the Whitehaven Act, and contained similar provisions.

[3] 50 Geo. III., c. 38.

[4] The Manor of Brighthelmstone (or Brighton) appears to have been connected with the Hundred of the same name. The officer appointed in the Manor Court, which was also in this case the Hundred Court, was therefore a High, and not a Petty Constable.

[5] 9 Geo. IV., c. 117.

[6] Manchester, 11 Geo. IV., c. 47; Salford, 11 Geo. IV., c. 8.

lighting, watching, paving, and generally regulating the township of Little Bolton.[1]

In the case of University and Cathedral towns and cities *ex-officio* representation is, as might be expected, one of the most prominent constitutional features of the local Acts applying to them. Oxford in 1771 obtained an Act[2] conferring upon a body of street commissioners very extensive powers for that date. Side by side with a representative of each parish in the city chosen by the parishioners, the Vice-Chancellor of the University, the Assessor, the Heads of Colleges, the Canons of Christchurch, the University Professors, the Proctors, the Public Orator, the Bodleian and Radclivian Librarians, the Keeper of the University Archives, the Master of the Streets, the Registrar of the University, the Vice-Principals of Halls, besides the usual representatives of the Corporation, were to be commissioners *ex-officio*. This was the most elaborate array of *ex-officio* members provided for by any of this class of street Acts. The *ex-officio* element presented in the Cambridge Acts of 1788[3] and 1794[4] was similar in character, but the office-holders composing it were not so numerous. In the Cathedral cities the Dean and Chapter are often, but not invariably, represented *ex-officio* upon the Street Commission. In the Act obtained for Lincoln in 1791[5] there is no such representation, but a new Act obtained in 1828[6] provides that the Dean, the Precentor, the Chancellor of the Diocese, the Sub-Dean, and the Chapter Clerk shall all be commissioners *ex-officio*. In Exeter the Dean and Canons are given seats;[7] at Canterbury the Dean and

[1] 11 Geo. IV., c. 46.
[2] 11 Geo. III., c. 19.
[3] 28 Geo. III., c. 64.
[4] 34 Geo. III., c. 104.
[5] 31 Geo. III., c. 80.
[6] 9 Geo. IV., c. 27.
[7] 50 Geo. III., c. 46; also 2 and 3 Wm. IV., c. 106.

Vice-Dean only,[1] at Carlisle the Dean and Prebendaries[2] have seats *ex-officio*. At Salisbury the Cathedral authorities, as such, got no representation,[3] and this was also the case at Chester[4] and York.[5]

There were, of course, cases of *ex-officio* representation quite peculiar to a single town. For instance, at Sheffield the town trustees and the Master and Warders of the Cutlers' Company were *ex-officio* commissioners,[6] and at Gravesend the Governor and Deputy-Governor of Gravesend and Tilbury (Fort?) and the Ordnance Storekeeper were similarly privileged.[7] A few other instances of such local and peculiar features of these constitutions will be found below.

(*b*) *The Co-optative Type.*

We now come to the most numerous class of Acts creating street authorities, those of which the most prominent constitutional feature was, that no part of the acting body was elected, the original members of the body as constituted by statute being authorised to recruit their number by co-option. An examination of 228 Acts of this class passed between 1726 and 1835 has been possible. Of these sixty-eight applied to places within the area of the present County of London, and 161 to provincial places. In this class of Acts a number of persons described in the Act by name only, together with, in a majority of cases, other persons included by virtue of offices held, form the original acting body, and these persons, or the survivors of them, are authorised to add others to their body as occasion arises.

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[1] 27 Geo. III., c. 14.

[2] 7 and 8 Geo. IV., c. 86.

[3] 10 Geo. II., c. 6; and 55 Geo. III., c. 25.

[4] 2 Geo. III., c.

[5] 3 Geo. III.; and 6 Geo. IV., c. 127.

[6] 58 Geo. III., c. 54.

[7] 3 Wm. IV., c. 51.

Very frequently the number of the acting body is not defined specifically; but, as the original members are empowered (though not in all cases directed) to fill vacancies caused by death, resignation, etc., there was, in some cases at least, an implication that the number of commissioners or trustees was to be kept up to the number of those originally named in the Act. In some statutes, however, the acting body was bound to maintain the membership at a prescribed number.

The number of persons originally named in these Acts varies very greatly, and the inclusion of *ex-officio* members in many instances renders it difficult to give precise details of the size of these bodies. But, to take cases where there is no *ex-officio* element and the body therefore consists only of persons named in the Act, we find that in the London district it varies from eleven in the Kensington Square Act[1] to 223 in the Kensington High Street Act,[2] the same neighbourhood providing the largest and the smallest metropolitan body of this kind. So in the provinces the members ranged from fifteen at Stony Stratford[3] to 258 at Durham.[4] The smallest number of named persons that occurs in an Act where *ex-officio* membership is also provided for is the Bridport Act of 1785; but here, apparently, the whole body of burgesses as well as the rector of the parish were added *ex-officio*. The most usual range of numbers is between thirty and eighty; but there are many instances in which over 100 persons are named in the Act; and the examples given of bodies exceeding 200 in membership by no means stand alone.[5] In this

[1] 43 Geo. III., c. 19.

[2] 7 Geo. III., c. 101. But this was an Act enabling the trustees for the turnpike road, of which Kensington High Street formed part, to perform certain street functions; and the body is formed on the Turnpike Trust model.

[3] 41 Geo. III., c. 130.

[4] 30 Geo. III., c. 67.

[5] In the Northampton Act of 1778 there are 302 named persons besides the Mayor, *ex-officio*. In the Reading Act of 1783, 159 besides

respect, as in some others, the promoters seem to have had a free hand, and it would require an intimate local knowledge of the towns, their inhabitants, the standing feuds, the temporary rivalries and jealousies, the interests which had to be conciliated or fought, and in fact all the circumstances which attended the promotion of each Act, before we could decide why Southampton in 1770 was content with a body of twenty-five besides its Town Council, whilst Winchester in the next year required 107 besides its Mayor and Aldermen; why Kingston-on-Thames in 1773 needed a Commission of ninety-seven, but Bridgwater could accomplish its purposes with nineteen.

Though the common feature of this class of Act is that it contained no elective element whatever, and consisted mainly of persons named in the Act of Parliament, the survivors at any time being empowered themselves to fill a gap caused by the death or defection of their fellows, that choice was limited by the qualification which those selected were to possess. We have already described the various qualifications as to property, occupation, residence, or some combination of these which were found in the Acts applying to the street bodies in which there was an elective element. The qualification for membership, in the class of street Acts now being discussed, did not greatly differ. They were, as might have been expected, a little more severe, and instances of qualification by occupation or residence as alternative to the possession of property, or as the sole qualification are considerably less numerous in this class than in the "elective class."[1] But the differences

the whole Town Council, and this number was raised to 198 in the Act of 1826. In the Halifax Act of 1762, there were 226 named persons; in a St. Pancras Act of 1789, 220, etc., etc.

[1] In Provincial Acts of this class, *possession* of property is the almost universal qualification, occupation to a defined amount as an alternative being rare. So far as I can discover there is no case of mere residence being a sufficient qualification in these Acts. Occupation of property to a defined minimum annual value is more frequent in the London than in the Provincial Acts of this class.

in the nature of property qualifications found in the "co-optative" Acts are not sufficient to justify their special description. The reader may safely assume that the property qualifications for membership of these co-optative bodies are, subject to the above remarks, of a similar nature to those required in the case of elected members.[1] We may therefore turn to the consideration of the character of the *ex-officio* members of these bodies.

Of sixty-eight metropolitan Acts of this class examined the acting body consists solely of the persons named in the Act in twenty-eight cases only; and the same is true of thirty-nine only out of 161 provincial Acts. The character of the *ex-officio* membership resembles in its general features that already described as accompanying the elective element in the constitutions already considered. Analysis of the "co-optative" Acts with a view to the exhibition of the accompanying *ex-officio* elements yields the following results:—

Metropolitan Acts.

Acting Body consisting of—

Named persons only (no *ex-officio* element)	28	
Named persons only, with Vestry, *ex-officio*	2	
Named persons only, with Rector or Vicar and Churchwardens only, *ex-officio* ...	6	
Named persons only, with Rector or Vicar only, *ex-officio*	2	
Named persons only, with Churchwardens only, *ex-officio*	2	
Named persons only, with miscellaneous, *ex-officio*	28	
	—	68

[1] See p. 137 *seq.*

Provincial Acts.

Acting Body consisting of—		
Named persons only (no *ex-officio* element)	39	
Named persons only, with representatives of a Municipal Corporation, *ex-officio* ...	85	
Named persons only, with the Lord of the Manor or other Manorial representatives, *ex-officio*	12	
Named persons only, with miscellaneous, *ex-officio*	24	
		— 160
		228

It will be observed that, as in the case of the street Acts containing some elective element, the clergy and other parochial officers do not occupy a very prominent position among the commissioners selected *ex-officio*. The clergy and parochial officers are not shown as a separate class in the table relating to provincial Acts, but especially in the later years of our period, they were not infrequently included among a number of other *ex-officio* representatives.

With regard to the character of the provincial bodies it is again to be observed that in almost every case where an Act is obtained for a corporate town—and these again form a considerable majority of the provincial Acts of the class now under consideration—the municipal corporation is almost invariably represented by *ex-officio* members. This municipal representation is of three types. In about one-seventh of the number of cases in which the corporations are represented *ex-officio* the Mayor is the sole representative; in the other six-sevenths the Acts are almost equally divided between those by which seats are given *ex-officio* to the

whole governing body of the corporation, and those in which they are given to the Mayor and Aldermen only.[1]

Thus the influence of the municipal corporations in the counsels of the street authority must have varied enormously. In the Northampton Act of 1778[2] the Mayor is the sole municipal representative, whilst the number of commissioners described by name only was 302. At Guildford,[3] on the other hand, where the named persons totalled only fourteen, the mayor, town council, ex-mayors, town clerk, bailiffs, and ex-bailiffs (besides the borough Members of Parliament) were all commissioners *ex-officio*. Perhaps an even more extreme case is that of the Bridport Act of 1785 already referred to, in which the bailiffs and burgesses all have seats *ex-officio* (except for the rector), whilst there are but nine other commissioners. But the cases in which, assuming equal assiduity on the part of both municipal and non-municipal members, the municipal members had a preponderating voice in the co-option of new members, and were thus able to make the commissioners virtually a committee of the corporation, were extremely few. As a rule, even when the whole governing body of the corporation are commissioners *ex-officio*, they are outnumbered by the ordinary members of the Commission.

A glance at the table given below[4] will demonstrate

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[1] The term "Mayor" is here used to include any head officer of a corporation by whatever name, in any particular instance. He is properly described as, *e.g.*, portreeve, bailiff, and similarly "aldermen" is here used to include jurats, justices, etc.

[2] 18 Geo. III., c. 79.

[3] 32 Geo. II., c. 58.

[4] Number of ordinary members in cases where the whole governing body of the Corporation were members *ex-officio*. All Acts referred to have the co-optative form of constitution.

Date.	*Place.*				*Date.*	*Place.*			
1749	Gloucester	...	...	42	1776	Boston	...	...	87
1759	Guildford	...	...	14	1776	Dorchester	...	...	87
1770	Plymouth	...	...	30	1776	Brecknock	...	...	115
1770	Southampton		...	25	1778	Dover	...	...	50

that, even in small towns, the Town Council must have been outnumbered, and in most cases overwhelmingly outnumbered, on the Commission, unless, as was hardly likely to be the case, the corporation representatives were much more zealous than their colleagues on the respective street commissions.

The only other class of *ex-officio* membership which can be separately dealt with is that by which the manorial interests found representation. There are a number of provincial Acts applying chiefly to unincorporate towns in which the lord of the manor or his manorial officials were given seats *ex-officio*. And there are some cases in which manorial representation *ex-officio* is found in corporate towns side by side with the *ex-officio* representation of the corporations already described. In fact, as can be seen below,[1] it is very seldom that the manorial

Date.	*Place.*		*Date.*	*Place.*	
1781	Devizes	97	1806	Daventry	44
1781	Henley-on-Thames ...	16	1810	Yarmouth	60
1785	Reading	159	1810	Southampton ...	25
1785	Arundel	45	1811	Colchester	65
1785	Bridport	9	1811	Glastonbury ...	23
1786	Tewkesbury	64	1815	Basingstoke ...	83
1789	Faversham	97	1819	Harwich	18
1790	Truro	63	1822	Tiverton	28
1793	Ludlow	20	1824	Evesham	42
1794	Tiverton	16	1824	Walsall	46
1796	Folkestone	47	1825	Devizes	110
1804	St. Albans	125	1826	Reading	198

[1] *E.g.*, the following are twelve cases where manorial representation *ex-officio* was prominent. Where there were other *ex-officio members* they will be found to be described below :—

Date of Act.	Place.	No. of named Persons.	Ex-officio members.
1763	Whitby ...	... 24	Lord of the Manor.
1769	Gainsborough	... 12	Lord of the Manor and all residents assessed to land tax at £20.
1777	Wolverhampton	... 124	The Stewards of the Manor of Wolverhampton and Stowheath, and the Prebends of the Collegiate Church.
1781	Colchester ...	... 42	The Lords and Stewards of the Manor, the High Steward, Mayor, Recorder, Aldermen, and Town Clerk of the Borough, and all Justices of the Peace for the Eastern division of Essex.
1785	Uxbridge ...	... 19	The Lord of the Manor.

representation is the only form of *ex-officio* representation provided for by any Act. Apart from parochial representation *ex-officio* in London, and corporate representation *ex-officio* in the provinces, all other cases of *ex-officio* representation are perhaps best treated as forming a very large and miscellaneous group the constituents of which can be described but not classified.

The character of these miscellaneous representatives is very much the same in these " co-optative " Acts as in the " elective " Acts already dealt with. We get again borough and county Members of Parliament, justices of the Peace resident in a borough, a whole county, a hundred, or a petty sessional division as the case may be; the clergy (who begin to figure pretty frequently in provincial Acts after 1800, but are rare before that date); where there is a school foundation the schoolmaster or other representatives of the school; in cathedral towns, the Dean and Chapter or some of that body, occasionally the trustees of a turnpike road. Such were the elements of which all kinds of *ex-officio* combinations were composed. Of these, and of com-

Date of Act.	Place.	No. of named Persons.	Ex-officio members.
1790	Honiton ...	... 24	The Lord of the Manor and all donors of £5 towards the purposes of the Act.
1809	Gainsborough	... 53	The Lord of the Manor, and the Vicar of the parish.
1812	Birmingham	... 100	The Lord of the Manor, and the resident Magistrates.
1814	Wolverhampton	...	As in 1777.
1824	Keighley ...	... 83	The Lord of the Manor, the Rector, the Churchwardens.
1825	Cirencester ...	... 98	The Lord of the Manor, the Minister of the Parish Church, the Proprietor of the Abbey Estate, the Steward and Bailiff of the Borough, and the Land Agent of the Lord of the Manor.
1825	Oundle ...	... 92	The Lord of the Manor, the Vicar, the Head Master of the Grammar School, the Churchwardens, and Overseers.

In some corporate towns, besides those mentioned above, the Lord of the Manor was included *ex-officio*, though the main body of the *ex-officio* representatives belonged to the Corporation. See Tiverton Acts, 1794 and 1822; Louth Act of 1825, etc.

binations peculiar to particular cases, a few representative instances will be found below.[1]

[1] Street Acts (co-optative in structure), miscellaneous *ex-officio* element.

Date of Act.	Place.	No. of named Persons.	Ex-officio members.
1762	Westminster	42	The Chancellor of the Exchequer, the Speaker of the House of Commons, the Members of Parliament for Westminster and for Middlesex, the Surveyor of the Board of Works.
1766	Southwark	114	The Members of Parliament for Surrey, the Members of Parliament for Southwark, the Treasurer of St. Thomas's Hospital, the Treasurer of St. Guy's Hospital, the Bailiff of the Borough of Southwark, the Comptroller of the Bridge Yard.
1771	Wapping St., etc.	60	The Mayor, Aldermen, and Recorder of London; the President and Treasurer of St. Bartholomew's Hospital, the President and Treasurer of Christ's Hospital, the President and Treasurer of the Bridewell Hospital, the President and Treasurer of St. Thomas's Hospital.
1802	Commercial Road	11	The Chairman and Deputy-Chairman of the West India Dock Company.
1811	Brewers' Estate (St. Pancras)	80	The Master and Keepers of the Brewers' Company.
1826	Grosvenor Place	35	The Governor and Secretary of the Chelsea Waterworks Company. The Steward of Lord Grosvenor and his Surveyor.
1765	Manchester and Salford	178	The Wardens and Fellows of the College of Christ, the Borough Reeves and Constables of Manchester and Salford.
1789	Chelmsford	50	The Chief Engineer of H.M. Ordnance; the Store-keeper of H.M. Ordnance; the Clerk of the Cheque, H.M. Ordnance; the Clerk of the Survey, H.M. Ordnance; the Agent Victualler, H.M. Ordnance; the Storekeeper of the Victualling Office; the Clerk of the Cheque, Victualling Office; the Vicar of the parish.
1804	Milton (Kent)	81	The Rector of the parish, the Surveyor of Highways.
1817	Tetbury (Glos.)	13	The Members of Parliament for Canterbury, Rochester, Maidstone, and Queenborough; the Portreeve of Milton, the Vicar and Churchwardens of the parish.
1825	Stourbridge	54	All Justices of the Peace for the County of Worcester resident in Stourbridge.
1828	Birmingham	88	All Justices of the Peace for the County of Warwick residing within seven miles of Birmingham.

It was to bodies constituted in this fashion of named commissioners or trustees with an *ex-officio* "tail" that the principal municipal functions recognised during our period were, in the greatest number of instances, entrusted. Their precise structure varied from time to time and from place to place, but their one common feature was the absence of any provision for the election of any part of the acting body by any constituency whatever, popular or otherwise. The reason for this probably lay in the absence of any popular demand for paving, lighting, street cleaning, or police protection, still less for sewers. The wage-earning classes for the greater part of our period were entirely indifferent to such matters, and there is little evidence of their having taken any interest at all in this legislation. Their indifference is not difficult to account for if we remember the general political conditions of the time; and when, in the early nineteenth century, they began to be aroused from the long sleep of the eighteenth, it was sometimes to oppose the necessity for such services at all rather than to demand a voice in their administration.[1] Though there are some cases of a popular demand for a popularly constituted street authority, it is demonstrably true that these local bodies, having no vestige of an elective element in their constitution, were created for town after town right down to the date of the first Reform Bill, apparently without exciting interest or comment.[2]

(*c*) *Bodies consisting of the whole of a Class.*

The type of constitution found among street authorities with which we have still to deal is that in which the acting body consisted of the whole of a class of persons defined in the local Act creating it. Fifty bodies

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[1] See *supra*, p. 32, as to such action at Devonport.

[2] Birmingham, which was to be the storm centre of 1832, suffered an entirely "self-elected" body to be set up in its midst in 1828.

having this structural character seem to have been constituted chiefly between the years 1790 and 1830. They were, as a rule, provincial bodies. The few cases which occurred in London are all found in acts which related to particular estates.[1]

The classes of persons, all of whom were included in the acting body of some street authority, were five in number:—

i. Persons *possessing* property of a defined amount and description within the area to which the Act applied.

ii. Persons *occupying* property of a defined annual value within an area.

iii. Persons possessing property of a defined annual value *and* occupying property (usually of a defined value) within an area.

iv. Persons possessing property of a defined value *or* occupying property (usually of a defined value) within an area.

v. Persons contributing money to be used in forwarding the purposes of the Act.

The first and fourth qualification are those most commonly occurring. The fifth is the rarest.[2]

It will be seen that the classes are exclusively defined by reference to the possession, occupancy, or donation of property. Qualification by donation only occurs in two comparatively unimportant cases. It will readily be understood that the qualification in these Acts for membership of statutory bodies, whether in respect of ownership or occupation, or either, or both, resembles the franchise qualifications described above in connection with the constitutions having an elective element. The commissioners in the one case are the same classes as the

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[1] Portman Square, 1782 and 1823; Hans Town, 1790; Doughty Estate, 1797; Calthorpe Estate, 1814; Brompton Square, 1824.

[2] The number of Acts containing provisions of each class was: Class i., 18; class ii., 3; class iii., 4; class iv., 18; class v., 2. Total: 45. Seven cases of class i. occur after 1800; but there are seventeen cases of class iv. after that date.

electors in the other. A very brief description of the nature of these qualifications, therefore, will suffice.

Ownership Qualification.—At Ipswich all those, and only those, inhabitants who possessed freehold or leasehold lands or tenements to the value of £40 per annum or who possessed personal estate to the value of £800 were commissioners.[1] At Dartford all possessors of a £50 freehold or a £100 leasehold were commissioners.[2] There is no case in which the qualification is the possession of personal property only. Nor is there any case in which the kind of property is left undefined. In most cases the qualification is the possession of real property alone, possession of personal estate not being an alternative except in a minority of cases.

Occupancy as Sole Qualification.—The Nottingham Act of 1762[3] made every occupier of premises in the town rated to the Poor Rate at £10 a year a commissioner. Similarly the Manchester and Salford Act of 1792[4] made every occupier of a £30 tenement, within the area to which the Act applied, a street commissioner for the two towns; and the tendency of constitutions to be repeated in the same neighbourhood is visible in the fact that similar constitutions are contained in the Acts obtained for Chorlton Row (1822), Hulme (1824), Ardwick (1825).[5]

Ownership and Occupation.—At Worcester, however, by the Act of 1770,[6] the commissioners were all those who possessed £40 freehold or £800 personal estate, *and* occupied a tenement of the annual value of £10 at least. For the same town a constitution of identical

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[1] 33 Geo. III., c. 92.

[2] 54 Geo. III., c. 108.

[3] 2 Geo. III., c.

[4] 32 Geo. III., c. 69.

[5] Burnley, 1819; Rochdale, 1825; Oldham, 1826; Stockport, 1826; Ashton-under-Lyne, 1827, differed only in the fact that they included *owners* as well as occupiers as Commissioners. In practical effect, though not in principle, these Acts resemble those of the Manchester district.

[6] 10 Geo. III., c. 22.

type was adopted in 1823,[1] but the qualification was raised, only occupiers of £20 tenements possessing either a £60 freehold or a £1,000 personal estate being the commissioners.

Ownership or Occupancy.—Finally the type of constitution in which the ownership *or* the occupancy of property is the qualification may be represented by Burnley where, by the Act of 1819,[2] all those who possessed lands or tenements to the annual value of £50 *or* occupied property to the value of £100 within the area to which the Act applied were commissioners. A simpler case of the same type is that of Rochdale, where those who either owned or occupied a tenement of the annual value of £35 were members of the local street authority.

Donation.—In an Act for widening and improving several streets in Manchester, passed in 1776,[3] besides those appointed commissioners by name, all persons contributing £20 towards the purposes of the Act within one year from the date at which the Act came in force were to be commissioners also. A similar provision is in the Bridgwater Act of 1826,[4] which was the Act for paving, cleansing, lighting, watching, and improving the town. In this case the qualifying donation was £50.

In some instances the commissioners thus determined were associated with others named in the Act, or with those entitled *ex-officio*. *Ex-officio* commissioners appear in nineteen of the fifty Acts of this class. They are as a rule the local Justices, or representatives of municipal corporations. For, again, the rule holds good that in corporate towns the corporation was represented as such, even if in numbers it was overwhelmed. The city of Worcester is an exception to the rule, for in

[1] 4 Geo. IV., c. 69.
[2] 59 Geo. III., c. 34.
[3] 16 Geo. III., c. 63.
[4] 7 Geo. IV., c. 7.

neither of the Acts already cited are members of the corporation, as such, noticed, though in the Act of 1823 the Justices of the Peace for the city were commissioners *ex-officio*.

It is obvious that where any function of government is placed in the hands of the whole of a class there may result, according to the definition of that class, the widest democracy or the narrowest oligarchy. Two of the varieties of the constitutions above described, those which constituted as street commissioners, in the one case all occupiers of property to a defined annual value, and in the other all owners and all occupiers of property to a defined annual value, whenever the qualification was a low one, resulted in the erection of crude democratic forms of government—government by assembly of the governed. But the occupation qualification was only as low as £10 in the one case of Nottingham. In Maidstone it was £15, in Lewes £20, and in Hulme and Stafford £25. In every other case where occupancy, whether as an alternative to ownership or not, gave the right to membership of the acting body of a Street Commission, that occupancy had to be of property worth at least £30 per annum. The effect of this must have been to place the most vital and important part of the government of the towns to which Acts of this type applied in the hands of those fairly well-to-do middle-class people who chose to attend to it.[1] The

[1] The occupancy qualifications, and the towns to which they applied, may be interesting. They are as follows :—

	Place.	*Date.*
£10	Nottingham ...	1762
£15	Maidstone	1791
£20	Lewes	1806
	Lichfield	1806
£25	Hulme	1825
	Stafford	1830
£30	Manchester and Salford.	1792
	Oswestry	1809
	Ardwick	1825
	Derby	1825
	Newbury	1825
	Oldham	1826
£35	Chorlton Road ...	1822
	Burslem	1825
	Rochdale	1825
	Stockport	1826
	Ashton-under-Lyne	1827
£40	Lancaster	1834
	North Shields ...	1828
	Ross	1830
£50	Godalming	1825
	Macclesfield ...	1825
£100	Burnley	1819
	Hanley and Shelton	1828

proportion of the wage-earning class who could afford to occupy property to the value of £30 in Manchester and Salford, or in Oldham, or £35 in Stockport, still less £40 in Lancaster, or £50 in Macclesfield, or £100 in Burnley and Hanley, must have been extremely small. Thus, though under this form of constitution a democratic body was possible, in practice care was taken to exclude all but the more substantial householders from power.

Where the possession of property was the sole qualification, the bodies formed were undoubtedly of an oligarchic character; and the assurance that this should be was doubly assured by the fact that the property which qualified was, as a rule, real property.

On the whole, therefore, this type of Act, which, it must be remembered, was most frequently enacted between 1800 and 1835, was almost as completely anti-democratic in character as the type in which surviving members of the governing body filled vacancies in their own number by co-option.

(*d*) *Town Councils.*

Although, as a rule, a special street authority of one of the types already considered was constituted in corporate towns, yet there are some cases in which the practice of the Victorian era was anticipated and the municipal corporation constituted the street authority. The City of London was a case in point. In the provinces the cases are comparatively rare; though some of them occur in connection with important towns. By a series of Acts beginning in 1701 the Town Council of Bristol was entrusted with the care of the Rivers Avon and Frome, and with the supervision of the lighting, paving, and cleansing of the town,[1] the Act in this respect probably being considered by its authors as merely declaratory of ancient and common law obligation; for it enacts that *inhabitants* are to sweep and

[1] 11 and 12 Wm. III., c. 23.

cleanse before the houses, to pave the streets at the order of the surveyor appointed by the Corporation, and to hang out lanterns from dusk till midnight. The Corporation were further to regulate the market. By an Act of 1755[1] the Council obtained power to organise a watch, and a further act of 1788[2] enlarged their powers for the removal of nuisances, and the provision and superintendence of markets. It will be seen that the Town Council of Bristol had not, however, by any means such wide powers as the bodies of commissioners whose constitutions we have described. This is true of a majority of the other corporate towns whose councils were granted by local Act some powers of the kind usually entrusted to street commissioners. The Town Council of Bath obtained power to organise a watch and to exercise some street regulation.[3] Similarly, lighting[4] and watching[5] powers were entrusted to the Town Council of Exeter. The Town Council of Hull was the street cleansing authority for a time.[6] In York the Council was the authority for lighting, cleansing, and licensing coachmen.[7] Similarly in Newcastle-on-Tyne.[8] Doncaster,[9] Gloucester,[10] various powers, chiefly of a fragmentary nature, were bestowed upon the municipal corporation. In Liverpool the powers of the Corporation were more extensive, including the regulation of the streets, the supply of water, sewers, and slaughter-houses, the provision of a fire police, and power to effect street improvements.[11] But there appear to be

[1] 28 Geo. II., c. 32.
[2] 28 Geo. III., c. 65.
[3] 30 Geo. II., c. 65.
[4] 1 Geo. III., c. 28.
[5] 46 Geo. III., c. 39.
[6] 2 Geo. III., c. 70.
[7] 3 Geo. III., c. 48.
[8] 26 Geo. III., c. 39.
[9] 43 Geo. III., c. 147.
[10] 1 and 2 Geo. IV., c. 22.
[11] 26 Geo. III., c. 12; 7 Geo. IV., c. 57.

only three cases occurring in our period, where the whole of the powers usually conferred upon the street commissioners are conferred upon the existing municipal authority in a corporate town. The cases are those of Wisbech in 1810,[1] Macclesfield in 1814,[2] and Newcastle-under-Lyme in 1819.[3] In these cases only was the Town Council constituted the street authority, with power to pave, light, watch, cleanse, remove nuisances, and construct sewers, and to raise money for these purposes. No further demonstration is needed of the fact that the municipal services which the eighteenth century was proving to be indispensable to the existence of anything like decency in urban life were entrusted to new bodies created specially for these services, and not to the ancient municipal authorities in corporate towns.

(*e*) *Anomalous Constitutions.*

Among the street authorities there were some whose constitutions cannot be fitted into any of the classes already described. For instance, the authority created for the Liberty of Norton Folgate in 1759[4] consisted, in the first instance, of the overseers of the poor, *ex-officio*, and forty-three named persons. Their successors were to be elected by all those persons who held the office of overseer, constable or headborough, or had held either of these offices. These, probably, formed the select vestry of the precinct. The effect of the Act, therefore, as time passed, would be to place the street administration under the control of a select vestry, the validity of whose constitution was probably doubtful, that body having already in its hands the administration of the Poor Law. In Westminster, where the acting body and the area administered were frequently changed by

[1] 50 Geo. III., c. 206.

[2] 54 Geo. III., c. 23.

[3] 59 Geo. III., c. 71.

[4] 32 Geo. II., c. 49; see also 50 Geo. III., c. 5.

successive local Acts, there were added in 1771[1] to the body already existing under the Acts of 1762-6 additional commissioners, consisting of three persons chosen by the vestries of each of the parishes[2] constituting the area administered. These persons, however, were to be resident householders possessing freehold property to the value of £300 a year, or personal estate worth £10,000, or the heirs to peers; probably the highest property qualification to be found anywhere in these local Acts. Another metropolitan instance of these anomalous constitutions illustrates the cases in which, what are to-day ordinary municipal services were, in certain districts of London, merely services supplied co-operatively by the owners of property, because their supply by those owners individually was impossible. By an Act of 1794[3] the body authorised to pave, watch, light, cleanse, and provide other street services for the newly developed Foundling Estate was to consist for three years of forty-two persons named in the Act. That period having elapsed, the Governors of the Foundling Hospital were to elect twenty-one of their own number, and the freeholders of the hospital lands were to elect twenty-one representatives (possessing a prescribed property qualification), and the forty-two persons so chosen were to replace the original commissioners. This is obviously a constitution which falls into none of our classes, the body created being, as to half its number, nominated by a charitable institution once owning the whole area of administration, and, as to the other half, elected by freeholders of property disposed of by the former proprietors. The services administered by the body so

[1] 11 Geo. III., c. 22.

[2] St. Margaret, St. John, St. Martin, St. George, St. James, St. Anne (Soho), St. Clement Danes, St. Mary-le-Strand, St. Giles, St. George (Bloomsbury), St. Andrew (Holborn), St. George the Martyr, The Liberty of Saffron Hill, Hatton Garden and Ely Rents, and (one representative only) the precinct of the Savoy.

[3] 34 Geo. III., c. 96.

created are evidently regarded not as the concern of the occupiers who enjoyed them, and who, in the first instance, at any rate, paid the rates for them, but as the concern of those to the perfection of whose property the services were essential—the owners of the freehold.

Other interesting constitutional experiments resulting in authorities which cannot be placed within the classes we have adopted are to be found in provincial Acts. In Bristol, as we have already stated, the street services from 1699 onwards had, by the provisions of local statutes, been placed under the control of the Corporation.[1] By an Act of 1806[2] a constitution is granted under which, while the corporate control is retained, a popular influence is introduced. The householders of each parish, and of the Castle precinct, were to choose ten of their own number, and from each list of ten the Mayor and Aldermen were to choose two persons, the parochial representatives so chosen forming the acting body. After an interval of two years from the first operation of the Act one representative of each parish was to retire, and his successor was to be similarly chosen, the retiring councillor being eligible for re-election. Another and more complicated constitution is that contained in the Hereford Act of 1774.[3] The acting body was composed first of an imposing array of *ex-officio* members, including the Lord Lieutenant of the County, the Mayor, Chief Steward, and Deputy-Steward of the City, the City Members of Parliament, the Dean, Canons, and Custos of the College of the Cathedral Church, and the Precentor, the Chancellor of the Diocese, the Customer and Coroner of the City, those members of the Corporation who had passed the Chair, the Chamberlains, the Town Clerk, the Register of the Bishop, the Register of the Dean, and the City Bailiff. One other commissioner is described in the Act

[1] See p. 162.

[2] 46 Geo. III., c. 26.

[3] 14 Geo. III., c. 38.

by name. The foregoing were at the first meeting to choose ten other members possessing a £20 freehold or £500 personal estate. These commissioners were to fill vacancies in their number by co-option, but those so chosen had to be possessed of a £40 freehold or £1,000 personal estate. To this large *ex-officio* and co-optive element there was added an elective element; for the vestry of each parish was to elect two householders every three years.[1] One other instance of these anomalous constitutions must suffice. It occurs in the Kingston-upon-Hull Act of 1810.[2] Here the *ex-officio* members were the Mayor, Aldermen, and Common Clerk; and there were ninety-eight commissioners described by name in the Act. When the *named* commissioners were reduced in number to twenty, others were to be chosen, by the Justices of the Peace,[3] to replace them, those persons only being eligible who possessed £100 freehold or £3,000 personal estate.

(*f*) *Bodies Confined to a Single Function, chiefly the control of Markets and Harbours.*

Besides the Acts dealing with the paving, lighting, watching, cleansing, and in the later year of our period, with the provision of drains and sewers, the suppression of nuisances, and town regulation generally, many Acts were passed providing for the administration of particular services, as, for instance, docks and harbours, markets, bridges, and gaols. But the constitutional provisions of these Acts do not need any lengthy description. The function is usually devolved upon a body of the kind we have already described.

In the case of markets, the Corporation in corporate towns, and the Lord of the Manor in unincorporate

[1] A constitution of this character occurs also in the Norwich Act of 1806 (46 Geo. III., c. 67), but the *ex-officio* element is not so large, though both cathedral chapter and the corporation are represented.

[2] 50 Geo. III., c. 41.

[3] The justices would be those for the county of the town of Kingston-upon-Hull.

towns, very frequently retained their ancient right to hold and to regulate the market, and no legislation for these purposes was obtained. Where a new market was required, or the power to regulate it needed amplification or definition, local Acts were obtained, and these sometimes created authorities for the special purpose. These authorities present hardly any constitutional features not already dealt with. The most common form of authority is that consisting of named persons, survivors among whom fill vacancies, as they arise, by co-option.[1] At Tiverton in 1825 the market was entrusted to a body consisting of the mayor and burgesses *ex-officio* together with a dozen persons named in the Act.[2] At York the market authority created by the Act of 1833 was elected half by the Town Council and half by and from the street commissioners.[3] At Exeter the administration of the market was entrusted to the representatives of the Corporation alone.[4]

The provision, improvement, or administration of harbours and docks was often provided for by separate local statute, but here again, in a majority of cases, the constitutional form of the administrative authority is one or other of those already described in our treatment of street authorities. In some cases the function was entrusted entirely to the Town Council or some other purely municipal authority,[5] in others there was a body

[1] Such authorities were created at Bilston in 1824, Basingstoke in 1829, Sheffield in 1827. At Taunton in 1769 a market authority of this type is created, but is charged with street cleansing and the removal of nuisances, and is therefore not an authority *ad hoc*. At Bognor a similar *ad hoc*. body is created in 1822, but has the ordinary street powers granted to it three years later.

[2] 6 Geo. IV., c. 139.

[3] 3 Wm. IV., c. 62.

[4] 4 Wm. IV., c. 8.

[5] *E.g.*, at Great Yarmouth, 1700 (10 and 11 Wm. III., c. 5), and at the same place again in 1721 (7 Geo. I., c. 11); at Bridport, 1722 (8 Geo. I., c. 11); Gravesend (Town Quay and Pier), in 1833 (4 Wm. III., c. 101); and at Boston (Lincs.) in 1834 (4 and 5 Wm. IV., c. 87).

of named persons co-opting their successors.[1] In another series of these Acts the authority consisted of representatives of the municipality *ex-officio*, together with a number of persons named in the Act, vacancies among the latter being filled by co-option.[2] Yet another series of Acts was passed in which the authority consisted of miscellaneous *ex-officio* members, together with a number of named persons, having similar power to co-opt for their own successors.[3] There was also a class of Acts in which the acting body was composed of the Lord of the Manor or some other representatives of manorial authority, together with a body of named persons.[4] There is one case in which the authority consists of the whole of the members of a class, with the vicar *ex-officio* and a number of named persons.[5]

Finally there were a number of harbour authorities

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[1] See Acts for Parton (Cumberland), 1706, 4 and 5 Anne, c. 18; Bridlington, 1714, 1 Geo. I., c. 49; Bridlington, 1718, 5 Geo. I., c. 10; Newhaven, 1735, 4 Geo. II., c. 17; Southwold, 1757, 30 Geo. II., c. 47; Shoreham, 1760, 33 Geo. II., c. 35; Aberystwyth, 1780, 20 Geo. III., c. 26; Amwlch, 1793, 33 Geo. III., c. 125; Barmouth, 1797, 37 Geo. III., c. 50.

[2] See Acts for Scarborough, 1731, 5 Geo. II., c. 11; Littlehampton, 1732, 6 Geo. II., c. 12; Southwold, 1746, 20 Geo. II., c. 14; Boston, 1776, 16 Geo. III., c. 23; Bridport, 1723, 4 Geo. IV., c. 19; Littlehampton, 1825, 6 Geo. IV., c. 170; Sheerness, 1829, 16 Geo. IV., c. 126; Southwold, 1830, 11 Geo. IV., c. 48. In the case of the later Acts for Littlehampton and Southwold, the County Justices of the Peace are added *ex-officio*.

[3] See the Acts for Dover, 1723, 9 Geo. I., c. 30; Rye, 1724, 10 Geo. I., c. 7; Dover and Rye, 1737, 11 Geo. II., c. 7; Sunderland, 1747, 20 Geo. II., c. 18; Ramsgate, 1748, 22 Geo. II., c. 40; Ramsgate and Sandwich, 1792, 32 Geo. III., c. 74; Broadstairs, 1792, 32 Geo. III., c. 86; Carnarvon, 1793, 33 Geo. III., c. 23; Margate, 1809, 49 Geo. III., c. 117; Sunderland, 1830, 11 Geo. IV., c. 49. The Acts for the Cinque Ports contain peculiar *ex-officio* elements of their own, and usually some municipal element. At Sunderland there was only one *ex-officio* member, the Collector of the Customs for the Port.

[4] See Acts for Whitby, 1721, 7 Geo. I., c. 16; 1734, 8 Geo. II.; 1827, 7 and 8 Geo. IV., c. 78; Parton, 1725, 11 Geo. I., c. 16; Minehead, 1737, 11 Geo. II., c. 8 (M.P.'s *ex-officio* also); Colchester, 1749, 23 Geo. III., c. 19 (County Justices *ex-officio* also).

[5] Act for Megavissey, 1775, 15 Geo. III., c. 62. The class consisted of all owners of £10 freeholds; there were thirteen named persons, besides the *owners of certain houses described in the Act*, who were to be members of the acting body.

created whose constitutions were peculiar. In the case of Great Yarmouth the authority created to repair, improve, and maintain the haven and piers was to be composed entirely of representatives of existing local governing bodies, three members being elected, respectively, by the common Councils of Yarmouth and Norwich, and by the Justices of the Peace of Norfolk and Suffolk.[1] In contrast with this we get, in an Act applying to Lancaster, and passed in the same year as the Yarmouth Act, an authority which ultimately was to be composed entirely of trade representatives. By this Act the River Lune was to be improved, and a quay built by a body consisting at first of the Mayor of Lancaster *ex-officio* and eighteen persons, named in the Act who were to hold office until 1775. From that date onwards the Act was to be administered by a body of sixteen commissioners elected triennially by merchants possessing at least one-sixth share in a vessel of fifty tons.[2] In Swansea the harbour authority was to represent both the municipality and trade. By the Local Act of 1791[3] a harbour authority consisting of the Lords of the Seigniories of Gower and Cilvey, the stewards, recorder, water bailiff, portreeve and aldermen of the town, and the chief agent of the Britonferry Estate, *ex-officio*, twelve named persons representing the collieries, and twelve burgesses to be elected by the burgesses of the town. The burgesses and those chosen to succeed colliery representatives were to possess at least £2,000 in colliery property, or £1,000 in ships. Another example is that provided by the Liverpool Harbour Act of 1825.[4] Here the committee entrusted with the administration of the Act was to be composed of the mayor and twelve persons appointed by the Common Council (four to retire and be replaced

[1] See 23 Geo. II., c. 6.

[2] See 23 Geo. II., c. 12.

[3] 31 Geo. III., c. 83.

[4] 6 Geo. IV., c. 187.

triennially), together with eight "ratepayers," paying rates (probably shipping dues) amounting to at least £10 per annum, who had lived five years in the town and paid £50 "rates" under former Acts, to be elected by the merchants and shipowners. Four of these trade representatives were also to retire and be replaced each year. Our last example of these unclassified harbour authorities may well be taken from the Rye Harbour Act of 1830.[1] In this case the governing body was composed of (1) the Lord High Admiral, and the mayor and jurats of Rye, *ex-officio;* (2) twelve persons resident in Rye, not being Commissioners of Sewers, and "being interested in ships to the extent of twenty tons," to be elected by all persons "interested" in ships to the extent of ten tons; (3) twelve inhabitant householders to be elected by the inhabitants of Rye in vestry; (4) twelve commissioners of sewers to be elected by the commissioners of sewers for the four "Levels" in the vicinity.

(*g*) *Conclusion.*

It will have been observed that these attempts to provide for the administration of urban services resulted —on the constitutional side, at least—in the formation of bodies framed upon no settled plan. Such harmony and order as can be discerned were the result not of design but of inevitable accident. When, within a single nation, men are engaged in the attempt to frame constitutions which shall provide for the performance of the same administrative functions under not widely differing conditions, great variations of constitutional detail are sure to occur, but, in the main outline of their schemes the number of variations is limited. It is for this reason that the constitutions we have considered are found to be capable of classification. That classification has already been sufficiently described, but there are some features of the legislation as a whole which it will be well to summarise.

[1] 1 Wm. IV., c. 135.

First, the number of bodies, any part of which were elected, was comparatively small. Where election did take place, it was seldom that the whole body was elected; *ex-officio* membership is a characteristic of the whole body of constitutional experiment we have considered. Again, the franchise on which such election as took place was conducted was frequently a popular one, but a limit was put to the freedom of popular choice by the property qualifications necessary to the elected, these qualifications being, as a rule, considering that they were for membership of local bodies, high ones. The most characteristic and common type of constitution for street authorities was that in which any element of popular control was entirely absent. In by far the most numerous class of Act the original members of the acting body were selected by the promoters of the Bill, and were described by name or office. Vacancies among those named are filled by co-option, taxation and representation being entirely divorced. In fact, these constitutions can be summed up by saying that, on the whole, they provided for the representation of property and of office rather than of people. The Acts are, as a whole, anti-democratic in character, and up to 1830 at least, no increase of tendency towards local democracy is visible.

This concludes our account of the constitutions of the bodies which were the Georgian ancestors of our present urban authorities. They may be regarded as the typical political embodiment of the great process of urbanisation, which was forced so violently forward by the substitution of power for hand labour—a process which appears not yet to have reached its culmination. The transition proceeded rapidly, and new conditions came into being before men were prepared to legislate for them. The new wine quickly burst the old bottles, and new bottles were devised, here in one shape, there in another. The wonder is, not that the bottles should have varied in shape and size and substance so much,

but that they varied so little; that standard patterns emerged. To drop the metaphor, the adaptation of institutions to rapidly changing conditions was a difficult task, a task which could not possibly have been foreseen, and therefore could not have been provided for. That the solution should have been groped after, and nowhere truly found, was to be expected. That it should still elude us to-day may have been inevitable. That we may reach some fairly permanent solution is one of the hopes of political science; that, at least, we may consciously and intelligently strive after one is our task.

Chapter V

THE NORMAL ACT

The Normal Urban Local Act

(*a*) *Introduction*

It is necessary to give some account of the contents of the local Acts, but if the account is to be kept within moderate limits the task is not a light one. The bulk of the material to be dealt with is great, and though there is a mass of provisions common to all the Acts, yet there are also, at any given date, very considerable differences between any one Act and all others dealing with the same subject.

Moreover, local legislation during the eighteenth century was not at rest, but in motion. In the Western world, at least, political problems are always problems in dynamics, not in statics. Thus the character of the Acts is constantly, if almost imperceptibly, changing. In 1710 they are of one type, in 1740 of another; in 1760 they are further developed; by 1780 they may be considered as full-grown, but nevertheless the double process of elaboration and simplification continues. The case is just that of the problem of value as stated by modern economists. At any given period a commodity has its normal value to which temporary values are always tending, but at which if they ever reach it, they seldom long remain, and this normal is itself in a constant process of change. The normal local Act was not any one of those which formed an actual chapter of the statute book, but it was the set of provisions to which at any period the local Acts tended to conform, but to which for local or personal reasons they seldom did

entirely conform. And this type was one which itself slowly changed. We propose to attempt to describe such a normal Act, and, in course of our description, to point out the character and the rate of the change in the type itself.

(*b*) *Preliminary Provisions.*

To each of the local Acts which created bodies of Street, or as they came more usually to be called, Improvement Commissioners, as to all other Acts of Parliament, a title was prefixed. The title was frequently of considerable length and generally contained allusion to the main purposes of the Act, and the name or description of the area to which the Act applied. The titles themselves, as will be seen from the example given below,[1] indicate that though the Acts as a whole had some common purposes, yet very many of them had special purposes also. In most of them, paving, lighting, watching, cleansing, and the removal and prevention of nuisances and obstructions are dealt with, though powers for performing each of these functions are not contained in every Act.[2] But to these common

[1] *E.g.*, An Act for better repairing and paving the highways, streets, and water courses within the city of New Sarum, and for enlightening the streets, lanes, and passages, and better regulating the nightly watching within the said city (10 Geo. II., c. 6).

An Act for more effectually cleansing, lighting, and watching the borough and town of Weymouth and Melcombe Regis in the county of Dorset, and for removing encroachments; for licensing chairmen, etc.; for establishing markets (16 Geo. III., c. 57).

An Act for paving, cleansing, lighting, and watching the high streets and lanes in the parish of St. Nicholas within the city of Rochester and parish of Strood in the county of Kent; and for making a road through the Star Lane, across certain fields adjoining thereto, to Chatham Hill in the said county (9 Geo. III., c. 33).

An Act for the better relief and employment of the poor within that part of the parish of St. Sepulchre which is in the county of Middlesex; and for paving, cleansing, lighting, and watching and regulating the squares, streets, lanes, alleys, courts, yards, and open passages and places within the same, and for removing annoyances therefrom; and for making the communication between Charterhouse Square and John Street, through Charterhouse Lane, more convenient (12 Geo. III., c. 68).

[2] In the earlier Acts, say those enacted before 1760, lighting and the removal of nuisances are more frequently omitted than included.

purposes some particular purposes determined by local needs are often added.

Following the title there invariably came a preamble setting forth, at greater or less length, the necessity for legislation. Many of the preambles are fairly complete statements of the grounds upon which legislation was sought; and this is more frequently the case with the earlier than with the later Acts. As time goes on the preambles dwindle into the line or two of which they usually consist at the present time; and the quaint touches which throw some light on the condition of localities as well as upon the ideas of their inhabitants disappear. In most of the earlier preambles the particular local purposes, as well as the purposes common to the majority of the Acts, are justified. There are, too, many cases in which particular clauses have their special preambulatory sentences prefixed.[1]

[1] The following is an example of a preamble justifying both the more common as well as the more special powers sought:—"Whereas the streets, lanes, and other public passages within the borough of Dorchester, in the county of Dorset, and also in the tithing of Colleton Row, which lies within and is part of the town of Dorchester aforesaid, are in general very ill cleansed, lighted, and watched, and the paths and passages thereof are greatly obstructed by various nuisances, annoyances, and obstructions, and the high-ways and foot-ways of great part thereof which are turnpike, are very inconvenient for walking thereon, and both the horse-ways and foot-ways of such parts thereof as are not turnpike are in a very ruinous condition; and whereas on the eleventh day of July last there happened in a certain street called the East Street within the said borough a sudden and terrible fire, which by reason of the many thatched houses in that part thereof where the fire began, burnt down and consumed twenty-two dwelling-houses, besides outhouses and other buildings, and the whole town was in imminent danger of being burnt and destroyed; and whereas it would tend greatly to the health, safety, and advantage of the inhabitants of the said borough and tithing, and be of great public utility to them and all other persons resorting thereto, if the said streets, lanes, and other public passages were properly cleansed, lighted, watched, and the nuisances, obstructions, and annoyances were removed, and the horse-ways and foot-ways, as well such parts thereof as are turnpike as otherwise, were rendered more convenient, and the horse-ways of such parts thereof as are not turnpike were better repaired; and it would tend to the preventing of future dangers by fire if all persons were prohibited for the future from thatching any houses and buildings in the said borough and tithing. . . ." (16 Geo. III., c. 27).

Another interesting preamble is from an early Act for lighting only:—"Whereas the enlightening the open places, streets, lanes, passages, and courts, and keeping a sufficient and well-regulated watch in the night time within the great and populous parish of Christchurch, in the county

The preamble was usually followed by the clauses determining the constitution of the acting body. This is true even of most of the amending Acts, for the statutory bodies usually found not only that their original powers were inadequate, or their original term (if one had been set) insufficient, but that their constitution needed reform. A description and analysis of these constitutional clauses has already been given in Chapter IV., and we may pass on, merely noticing such constitutional provisions as are not there analysed, and the main points of the procedure prescribed by the Acts.

Usually the quorum for meetings of the statutory body was fixed in the Act,[1] and frequently the time, date, and place of the first meeting are prescribed.[2] Specific power to hold and to adjourn meetings, and power (vested in the Clerk or other official) to summon fresh meetings in cases where a quorum has not been forthcoming usually follow.[3] The acting body is specifically granted power to appoint officers such as Clerk, Treasurer, Rate Collector, Surveyor, and any other officers deemed necessary by a quorum of the acting body, and to take security from such officials for the due performance of their office.[4] There follow

of Middlesex, will be of great importance, and tend not only to the preservation of the persons and properties of the inhabitants thereof, but for the common safety and benefit of all other persons resorting to and from the market kept within the said parish, and all other persons whose affairs oblige them to pass and repass through the same, and very necessary to prevent, as well the mischiefs which may happen from fires as murders, burglaries, and other outrages and disorders; and whereas by the laws now in being no effectual provision is made for the enlightening the said streets and other places. . . ." (11 Geo. II., c. 35, Christchurch, Spitalfields).

Examples of preambles to particular clauses or portions of Acts are to be found in 7 Geo. I., c. 11, Great Yarmouth; 10 Geo. II., c. 6, Salisbury; 6 Geo. III., c. 34, Southwark; 12 Geo. III., c. 18, Chatham; 21 Geo. III., c. 74, Gloucester; 23 Geo. II., c. 19, Bristol, etc., etc.

[1] See, *e.g.*, 5 Geo. III., c. 81, Manchester.

[2] See, *e.g.*, 6 Geo. III., c. 72, Richmond.

[3] See, *e.g.*, 6 Geo. III., c. 24, Southwark.

In some cases the Act specifically provides for the election of a chairman and grants him a casting vote. See 50 Geo. III., c. 38, Brighton.

[4] See 6 Geo. III., c. 24, Southwark; 43 Geo. III., c. 59, Worthing, etc.

provisions for the proper keeping of records of proceedings and accounts, the vesting of the property in these documents in the acting body, penalties on officers or others withholding such documents from proper custody and machinery for the recovery of such penalties.[1] Sometimes there is provision for the inspection of the minutes of proceedings and accounts by ratepayers.[2]

Then follow clauses granting the powers and imposing the duties necessary to the fulfilment of the purposes of the Act. We may take the more usual functions in their turn.

(*c*) *Paving.*

The Acts almost invariably contained power to pave or contract for the paving of the streets, lanes, alleys, passages, and public places within the areas to which they applied.[3] These paving powers were often limited to a particular part of the whole area.[4] In such cases there was generally provision whereby streets not originally included could, upon the expressed desire of the owners, or a majority of them (the form of the request and the extent of the majority being prescribed in the Act), be brought within the area to be paved.[5] Sometimes streets omitted from an original Act are

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[1] *Ib.*, etc.

[2] *E.g.*, 6 Geo. IV., c. 79, Brighton.

[3] But such powers were not quite invariably included. For instance, in the Acts passed so late as 1791 for Deritend and Bordesley and for Stourbridge respectively there are no provisions at all concerning paving. See 31 Geo. III., c. 17; 31 Geo. III., c. 70.

[4] *E.g.*, see 11 Geo. III., c. 22, Rosemary Lane, etc.; 11 Geo. III., c. 9, Winchester; 12 Geo. III., c. 18, Chatham; a very interesting case in which certain named streets and places are exempted from the operation of the Act on the ground of the poverty of the neighbourhood. The exemption applied to cleansing as well as to paving and lighting. 13 Geo. III., c. 15, Gravesend; 31 Geo. III., c. 80, Lincoln, etc.

[5] See *e.g.*, 11 Geo. III., c. 22 (Rosemary Lane), and most of the Acts last above cited.

included by an amending Act.[1] In other Acts the order in which the streets are to be paved is prescribed.[2]

The power to pave was usually granted in general and comprehensive terms, so that in most instances the statutory body would have been acting within its powers in carrying out the work directly without the intervention of a contractor.[3] Whether this were so or not power to *contract* for paving was always granted.[4] Specific power to bring an action for the recovery of any penalty fixed in the contract or for damages on breach of contract were the inevitable accompaniment of the power to contract.[5] But, not infrequently, besides the power to bring an ordinary action at law, the commissioners were empowered to recover summarily, a special penalty for breaches of contracts and covenants, upon an information, before a Justice of the Peace.[6] This power to recover special penalties by summary procedure is characteristic of these Acts, and will frequently be referred to again.[7] In some cases the actual form and essential contents of the contract were

[1] See *e.g.*, 21 Geo. III., c. 47, Oxford, in which the Commissioners under the Act are empowered to pave and repair not only the streets included in the schedules to the original Act, but all other streets within the University City, Suburbs, and the parish of St. Clement's.

[2] See 16 Geo. III., c. 27, Dorchester; 16 Geo. III., c. 57, Weymouth; 6 Geo. III., c. 24, Southwark. The Westminster Paving Act, 11 Geo. III., c. 22, has a clause apparently designed to secure that new streets and places not in existence at the date of the Act should be paved. The officers of the Commissioners (or the local Committees of the districts into which Westminster was for the purpose of this Act divided) could "present" to the Commissioners or Committee the lack of paving in places to which no existing contract for paving applied, and such pavement had then to be undertaken.

[3] See *e.g.*, 6 Geo. III., c. 24, Southwark, where a general power to direct that the streets, etc., within the limits of the Act be paved, lighted, and cleansed, and to employ workmen and to do every other act necessary for carrying out the purposes of the Act is conferred.

[4] *Ib.*, see also 15 Geo. III., c. 54, New Gravel Lane, Shadwell.

[5] See also 19 Geo. III., c. 39, Burton, etc.

[6] See 15 Geo. III., c. 54, New Gravel Lane, Shadwell, etc. The penalty was forty shillings, and was to be forfeited in addition to any sum recovered by ordinary procedure.

[7] See, *e.g.*, p. 191.

prescribed;[1] and sometimes, too, it was provided that the intention to make contracts should be advertised in a public newspaper in order to secure public competition.[2]

In all cases the property in the paving carried out by virtue of powers granted in the Act was vested in the statutory body. Penalties were summarily recoverable for damage done to the pavement.[3] Disturbance of the pavement without the consent of the commissioners was generally forbidden.[4] Early in the history of the Acts we are describing disturbance of the pavement by companies having power to lay pipes had become notoriously in need of regulation; and there was scarcely a single local street Act applying to any considerable district or town in which a clause having such a purpose was not included.[5]

Not only was the disturbance of the pavement in general forbidden,[6] but, occasionally, an attempt was made to preserve paved streets by regulating the character of the traffic. This was the device commonly adopted in Turnpike Trust Acts before Macadam had taught road authorities that it was in vain to regulate the character of the traffic in the hope of preserving a

[1] *E.g.*, 19 Geo. III., c. 39, Burton on Trent. Contracts were to be in writing, signed by seven Commissioners and the parties contracting to do the work. They were to specify the works to be done, the prices to be paid, the time within which works were to be completed, and the penalties to be suffered in case of non-performance.

[2] See 6 Geo. III., c. 24, Southwark; 50 Geo. III., c. 38, Brighton, etc. In the latter case, only contracts of the value of £50 and upwards were necessarily to be advertised.

[3] 15 Geo. III., c. 54, New Gravel Lane; 35 Geo. III., c. , Maidstone, etc., etc.

[4] See 31 Geo. III., c. 62, Maidstone, etc., etc.

[5] See *e.g.*, 19 Geo. III., c. 36, Bridgwater; 26 Geo. III., c. 120, Liberty of the Clink; 36 Geo. III., c. 61, Upper Ground Street; 31 Geo. III., c. 18, St. Pancras, etc. The Act obtained for Plymouth in 1772 (12 Geo. III., c. 8), and the Act for the Liberty of the Clink, dealt specially with the damage caused by the bursting of water pipes.

[6] As in 15 Geo. III., c. 54, New Gravel Lane, etc., Shadwell, in which case all persons other than those employed by the Commissioners were forbidden to pave, repair, or otherwise intermeddle with the pavement under a penalty of forty shillings. See also 20 Geo. II., c. 48, Goswell Street.

badly made road. The promoters of the Deal Act of 1791[1] adopted on this point the bewildering practice of legislation by reference, and persuaded Parliament to enact that, in Deal, no carriage should be drawn on any of the new pavements with a "larger" number of horses or a greater weight than might pass on any turnpike road.[2]

After about 1770 a very common clause was that empowering the commissioners to take materials for paving compulsorily.[3] The power was sometimes confined to the getting of materials from commons, wastes, rivers and brooks, within the jurisdiction of the commissioners, without compensation.[4] The more usual form of the clause allowed materials to be taken from privately owned lands[5] provided they were not yards, gardens, orchards, nurseries, or the like, on payment of compensation. The compensation in default of agreement was usually to be assessed by two Justices of the Peace, but occasionally[6] by the Justices at Quarter Sessions. Express power to dispose of superfluous materials was also usually conferred.[7]

So far, we have described only those cases in which the

[1] 31 Geo. III., c. 64.

[2] Compare also the Bristol Act of 1766, where no four-wheel vehicle laden with more than fourteen sacks of corn, meal, or grain, nor any two-wheel vehicle carrying more than eight sacks was to pass on the streets, etc., of the City; nor could any vehicle drawn by a greater number of horses than permitted by the laws relating to the Turnpike Roads of Gloucester and Somerset be allowed to pass, except where the load was a single block of stone, under penalty of twenty shillings (6 Geo. III., c. 34).

[3] See 11 Geo. III., c. 9, Winchester; 11 Geo. III., c. 19, Oxford Mileways (which was partly in the nature of a Turnpike Trust Act); 19 Geo. III., c. 39, Burton-on-Trent; 21 Geo. III., c. 36, Devizes; 21 Geo. III., c. 72, Plymouth Dock, etc.; 26 Geo. III., c. 17, Tewkesbury; 26 Geo. III., c. 116, Cheltenham; 26 Geo. III., c. 119, Newport, Isle of Wight, etc.

[4] See Devizes Act, *cit. sup.*

[5] The Plymouth Dock (Devonport) Act, expressly exempted. Crown property.

[6] See the Tewkesbury Act, *cit. sup.*

[7] See 6 Geo. III., c. 24, Southwark, etc.

pavement was to be provided by the statutory body directly or by means of contractors. In some of the earlier Acts, however, the obligation to pave was placed upon the owners of property adjoining the streets. Sometimes this obligation was statutory. For instance, in the Bristol Act of 1700[1] it was provided that owners of property adjoining the streets should pave them to the middle of the streets. It was set out in the preambulatory sentences to the amending Act of 1748[2] that, as the streets were very broad, and many of the houses were small, and therefore commanded low rents, the burden of paving had been found very heavy; and it was therefore enacted that where the streets were more than thirty feet in width the Mayor and Justices in Quarter Sessions should determine how much of the street should be paved by the property owners, and that the obligation to pave the rest should be shifted on to the parish.[3]

In some cases the obligation on the owners to pave seems to have had its origin in custom; and the object of the clause in the local Act which dealt with the matter was to declare the obligation and provide the machinery for its enforcement. Thus a Colchester Act of 1749 provided that owners should continue to pave (to the middle of the street or lane) such streets, lanes, etc., as had formerly been paved, and the Surveyors of Highways for the several parishes of Colchester were, at least once in three months, to take a view of all the streets and lanes within their respective parishes, and return, on oath, to the Justices in the Special Sessions, the names of landlords whose pavement was out of repair. The Justices so assembled might order repairs

[1] 11 & 12 Wm. III., c. 23.

[2] 22 Geo. III., c. 20.

[3] The Surveyors of Highways were to be responsible for the parish paving; and it was also to be their duty to present owners not fulfilling their obligations as above determined, to the Quarter Sessions. The obligation to pave the whole width of the street was, however, reimposed by an Act of 1766 (6 Geo. III., c. 66).

to be executed; and, if the order were not obeyed, the surveyors might do the necessary work, recovering the cost from the landlords, by distress, if necessary. The surveyors were, at the cost of the Highway Rate, to pave the streets adjoining churches and churchyards, as well as all "public places," and, moreover, they were to pave and amend, at the cost of the ratepayers, streets adjoining places where no sufficient distress could be made.[1]

Some of the difficulties of getting paving done by compelling each property owner individually to do his share are indicated, even in the above summary, of the Colchester clauses. And, as time went on, this kind of individualism, or perhaps, more accurately, this method of taxing a special class by demanding a service in kind, followed its mediæval analogues into oblivion.[2]

In the later Acts we find the existence of old obligations upon owners to pave the streets adjacent to their premises recognised. This obligation to pave was almost invariably changed by the Act into an obligation to pay rates, though, if any contract had been entered into between landlord and tenant, that contract was to be respected, the rate being payable by the person upon whom the contract had imposed the obligation to pave.

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[1] 23 Geo. II., c. 19.

[2] Little seems to be known as to how such old obligations to pave arose. Sometimes they were created by statute. *E.g.*, the Act of 24 Hen. VIII., c. 11, ran thus: "The street way between Charing Cross and Strand Cross shall be sufficiently paved at the charge of the owners of the land, and, the pavement being made, it shall be maintained by the owners of the land adjoining the same upon pain of forfeiture of VId. for every yard square not paved or repaired." See also 25 Hen. VIII., c. 8, Holborn; 13 Eliz., c. 23, certain ways without Aldgate; 13 Eliz., c. 24, Ipswich; 18 Eliz., c. 19, Chichester; 23 Eliz., c. 12, Minories. In all these cases the obligation to pave streets, and to keep the pavement in repair, was placed upon the owner of the adjoining land. The old law books, *e.g.*, Lilly, *Abridgment* (ed. 1735), and Coke upon Littleton, have no mention of paving, but that some paving was accomplished in English towns much earlier than the dates of the statutes above cited, seems certain, as a payment known as "pavage" existed. "Pavage (*pavagium*): Money paid towards the paving of streets or highways. 'Rex. (Edw. I.), concessit pavagium villae de Huntingdon per quinquennium.' *Pla. Parl.*, 35 Edw. I." (Blount, *Law Dictionary*, 1717).

Thus, while in 1766 a Bristol Act[1] re-imposed the liability of the property owner to pave before his property to the middle of the street, the Southwark Act of the same year enacted that those obliged, by contract or otherwise, to pave, should pay rates instead.[2] It was the Southwark, not the Bristol, precedent which was followed in the subsequent legislation.[3] Some exceptions to this progress towards the collective management of the paving occur, as, for instance, in the cases of the Cheltenham Act of 1786 and the Lincoln Act of 1791, where the paving of the footways was to be carried out by the owner or occupier, or, in default, by the commissioners' surveyors, in which case the cost would be levied by distress on the tenants' goods. The sums thus recovered from the tenant, whether with or without distress, might be deducted by him from his rent. The cost of paving, therefore, was recoverable from the tenant, but its incidence was upon the landlord.[4] These precedents, however, do not seem to have been followed often.

Some of the local Acts contained clauses prescribing a standard of paving. For instance, the Act passed for Plymouth Dock and Stoke Damerel[5] in 1781 provided that the footways to the breadth of four feet should be paved with flagstones and such part of the footways as exceeded four feet in breadth should (together with the

[1] 6 Geo. III., c. 34.

[2] 6 Geo. III., c. 24. Note that the Act expressly provided that where streets, places, etc., were pavable, or repairable by any particular parish, body politic or corporate, and not by the owners or occupiers of property adjoining such streets, etc., those streets should be repaired, by the paviors of the Commissioners, at the expense of such parish, corporation, etc. Thus the body corporate or politic had apparently not to pay rates, but to pay for the particular paving already chargeable to it.

[3] See *e.g.*, 9 Geo. III., c. 21, Gainsborough; 26 Geo. III., c. 120, Liberty of the Clink; 31 Geo. III., c. 61, Upper Ground Street; 31 Geo. III., c. 62, Maidstone, etc. In all these Acts the Commissioners have power to determine finally disputes arising out of existing contracts between landlords and tenants concerning paving.

[4] See 26 Geo. III., c. 116, Cheltenham; 31 Geo. III., c. 80, Lincoln.

[5] Now known as Devonport.

horse and carriage ways) be paved with good ragstones, pebbles, or other materials.[1] The Gloucester Act of the same year established different standards for different streets, though in all cases the foot-pavement was to be flat.[2] There is less precision as to the standard in the clause of the Deal Act (1791) which enacted that "all the footways, where practicable, shall be paved with smooth pavement and a kerbstone; and the horse and carriage ways with good stones or pebbles, as the said commissioners shall judge meet and proper."[3]

In the normal Act the commissioners are empowered to keep the pavement, when made, in repair; and, in most Acts, it was evidently intended that a running contract should always be in existence under which a contractor would be bound to maintain the pavement in a proper state. But in the few Acts where the duty of the property owner to pave the footway before his property was retained, provision for keeping the pavement in repair seems to have been omitted altogether.[4]

The methods of securing the proper repair of pavements are interesting. Two opposite assumptions seem to have been made. In some cases it was assumed that the commissioners or their officers would be zealous to prevent the pavement falling out of repair; in others that the intervention of householders would be necessary in order to keep the commissioners and their officers up to a proper standard of duty. In the Southwark Act of 1766, for instance, the commissioners were specifically empowered to contract for the repair of pavements laid down by them in the streets within their jurisdiction; and it was tacitly assumed that the commissioners would exercise this power.[5] In other cases provision was made

[1] 21 Geo. II., c. 72.

[2] 21 Geo. III., c. 74. See also 9 Geo. III., c. 13 (St. Martin's-le-Grand), where a flat pavement was presented, etc.

[3] 31 Geo. III., c. 64.

[4] See *e.g.*, 26 Geo. III., c. 116, Cheltenham.

[5] But the Act sets forth that a considerable time must elapse before all the streets, the pavement of which was authorised, would be paved.

whereby householders might keep the acting body up to its duty, and thus secure to themselves the enjoyment of one of the commodities for which they paid their rates. The Rochester Act of 1769 provided that, after the expiration of a year from the passing of the Act, if any two "housekeepers" made complaint, in writing, to the commissioners or their officer of any defect or want of repair, the commissioners or their officer must inspect the pavement and, if it were found defective, cause it to be repaired.[1] Similar provisions are to be found in the Westminster Act of 1771,[2] and in the Deal Act of 1791.[3]

We have already noted that where property owners had been liable for the repair of existing paving the policy displayed in these Acts is, in general, to convert such a specific obligation into the general obligation to pay rates, any contract as to the burden between landlord and tenant being respected.

In the meantime want of repair of existing pavement might be dangerous and amount to a nuisance. The presentment of such a nuisance to the Court Leet was a process "attended with great delays." The Surveyor employed by the Commissioners was, therefore, when directed by the Commissioners, to view existing pavements, and present defeats to the *Commissioners* who were authorised to order the owners of adjoining premises to repair these defects, and in default, to execute repairs, and recover the cost by distress. But this procedure was not to be construed as a restraint upon the powers of the Court Leet, though no person was to be punishable twice for the same offence (6 Geo. III., c. 24).

[1] 9 Geo. III., c. 33. A standing contract for paving and repairing seems to have been contemplated by those who framed the Act, as the Commissioners are, under the above circumstances, to give notice forthwith to the contractor or pavior, who must execute the repairs within six days under penalty of twenty shillings for each day the pavement remains unrepaired beyond the termination of these six days.

[2] 11 Geo. III., c. 22. Here the provisions referred to are to be found in the middle of a clause providing the machinery for bringing about the paving of streets and places not paved, or contracted to be paved, and the power of the householders (three in this case) is concurrent with that of the Commissioners' officers.

[3] 31 Geo. III., c. 64. The clause in this Act resembles that in the Rochester Act, but the contractor is allowed fourteen days, and the penalty for delay beyond that period is five shillings a day only.

(*d*) *Lighting.*

The title of the ordinary eighteenth century improvement Act usually ran: "An Act for paving, lighting, watching, cleansing, and otherwise improving. . . ." So that, observing the order prescribed for us by the Parliamentary draftsmen of those days, we have next to consider the provisions of the local Acts which dealt with lighting.

In the first place it is to be remarked that powers for the public provision of lighting were not generally inserted in local Acts until after 1750. The Act of 1662 applying to London and Westminster provided that from Michaelmas to Lady Day every householder should "hang out candles or lights in lanterns or otherwise in some parts of his house next the street to enlighten the same for passengers from such time as it shall grow dark until 9 o'clock in the evening.[1] But this was probably merely a declaration of some existing customary obligation which may or may not have been enforced. The other local Acts of the late seventeenth century which applied to the city, to the more thickly populated parts of the then metropolitan area, or to small portions of the fashionable quarter, contained no lighting provisions of any kind.[2]

In 1737 local improvement Acts were obtained for Red Lion Square, and for the Liberty of Saffron Hill, Hatton Gardens, and Ely Rents respectively;[3] but they contain no lighting powers; nor are lighting clauses to be found in the Acts, obtained between 1740 and 1750

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[1] 13 and 14 Chas. II., c. 2.

[2] See 22 and 23 Chas. II., c. 17, London; 2 Wm. and M., sess. 2, c. 8, Westminster; 5 and 6 Wm. and M., c. 10, London; 8 and 9 Wm. III., c. 17, for paving the Haymarket, etc.; 8 and 9 Wm. III., c. 37, London, Westminster, and Southwark.

[3] 10 Geo. II., c. 15, and 10 Geo. II., c. 25.

for Beverley,[1] St. James's, Westminster,[2] Gloucester,[3] Colchester,[4] and St. Martin's-in-the-Fields.[5]

But although lighting powers cannot be said to have become a part of the normal contents of the local Acts until after 1750 yet early examples of the inclusion of such powers are not wanting. The Bristol Act of 1700[6] has that touch of quaintness, both in phraseology and content, which distinguishes some of the earlier local legislation from the duller, if more comprehensive, Acts of later date. Its lighting clause was as follows: "Every householder chargeable with twopence or more by the week to the relief of the poor, and whose house adjoyns to any public street or lane within the same city, from Michaelmas Day to Lady Day yearly, shall every night set or hang out candles or lights in lanthorns on the outside of their respective houses, next the street or lane, to enlighten the same, for the conveniency of passengers, from time to time, as it shall grow dark until twelve of the clock at night upon pain of forfeiting two shillings for every default." So far Bristol relied on individual service; but provision was also made for the commutation of that service into a money payment, and for an extension of the liability, to contribute towards the lighting, of all parishioners and not merely those whose property abutted on the public streets. For, in the same statute, it was enacted that the inhabitant ratepayers of any parish or precinct might agree upon a pattern lamp to be approved by the Justices in the City Quarter Sessions, and that, if such agreement were made, the churchwardens and overseers and the surveyors of highways *must* then make a rate for the erection and maintenance of public lamps. The citizens in parishes where this was done were exempted from their obligation to

[1] 18 Geo. II., c. 13.
[2] 20 Geo. II., c. 29.
[3] 23 Geo. II., c. 15.
[4] 23 Geo. II., c. 19.
[5] 23 Geo. II., c. 35.
[6] 11 and 12 Wm. III., c. 23.

bring out lights under the preceding section. The Act thus presents us with one of the characteristic developments of local legislation as applied to urban districts in the England of the eighteenth century. What has been the individual practice of good citizens, or the ancient custom of the city receives the sanction of statutory enactment; but, in the same Act an individual liability to service is converted (or, as in this instance, made convertible) into the collective provision paid for out of a public rate.

Another early example of a lighting clause is to be found in the Great Yarmouth Act of 1721.[1] In this case the clause is very simple. After the recital "that the inhabitants of Great Yarmouth . . . are desirous to have the open places and streets thereof enlightened in the dark nights of the winter season for their common benefit" it was enacted that certain dues should be imposed on coal, culm, and cinders. The dues were payable to the Corporation "for erecting lights in the said town . . . and for repairing and maintaining the said lights." The power to decide what kind of light should be used, where the lamps should be placed, and for how long they should remain lighted, thus granted, in general terms, to the Corporation of Great Yarmouth, was specifically granted to the commissioners created for Salisbury in 1737,[2] where, moreover, the cost of lighting was to be met, not by a municipal import duty, but by a rate. In the next year an Act for the sole purpose of lighting the streets, lanes, passages, and "courts" was obtained for the parish of Christ Church, Spitalfields.[3] Here the whole arrangements for the lighting, including the power to make a lighting rate, are specifically and in detail, entrusted to the parish vestry.[4]

No other local Act appears to have contained provision

[1] 7 Geo. I., c. 11.

[2] By 10 Geo. II., c. 6.

[3] 11 Geo. II., c. 35.

[4] See also 27 Geo. II., c. 25, St. Luke's, where the acting body is the parish vestry.

for lighting until the year 1749, when the parish of St. Leonard, Shoreditch, obtained legislation[1] containing a lighting clause, which, on account of the fact that the authority entrusted with this function is neither a vestry nor a municipal corporation, but one of the specially created bodies of "trustees" or commissioners,[2] and on account of its wording, may be taken as typical of the clauses henceforward commonly included in local improvement Acts. The clause ran as follows:—

"The trustees (or any seven of them) shall and may, yearly and in every year, order, direct, and appoint what number and sort of lamps shall be erected or set up within the said parish; and may appoint or contract with any person or persons for the lighting, cleansing, supplying, maintaining, and repairing such lamps . . . and shall likewise direct and appoint in writing, how and where the said lamps shall be placed, and at what time and how long the same shall be and continue lighted . . . and what sum shall be paid to the person or persons appointed or contracted with to light, maintain, and repair the said lamps; . . . and make all such other orders and regulations in writing as the nature of such particular service shall appear to them or to any score or more of them to require."

Clauses follow vesting the property in the lamps in the acting body and prescribing penalties for breaking, throwing down, extinguishing lamps, damaging lamp irons, and other depredations of the kind, playful or malicious.

These provisions become typical of the Street Acts passed from 1750 onwards and are almost universal in local improvement Acts passed between the accession of George III. and the death of William IV.[3] Indeed we

[1] 22 Geo. II., c. 50.

[2] The Salisbury Act of 1737 also conferred lighting powers on a body of Trustees, including the Mayor, Recorder, and Aldermen *ex-officio*.

[3] *E.g.*, 27 Geo. II., c. 25, St. Luke's; 29 Geo. II., c. 87, St. John's, Wapping, etc.; 2 Geo. III., c. 21, Westminster. The clause in this Act is in much more general terms than that quoted. But it is worthy of

find in the Acts of the early nineteenth century the very phraseology of the earlier Acts retained with but few changes, and, apart from minor local peculiarities, and a few small developments which experience showed to be necessary, the provision unchanged. The chief additional powers were those taken to recover for accidental as well as wilful damage to lamps and for the recovery of penalties by summary process from contractors neglecting their duties.[1]

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mention that under this Act a very large part of Central and West London could, for the first time be lighted at the cost of public rates. The area to which the Act applied, included not only the Westminster parishes, but St. Giles-in-the-Fields, St. George the Martyr, St. George, Bloomsbury; St. Andrew's, Holborn; the Liberties of the Rolls of the Savoy; and of the Duchy of Lancaster; in fact, an area practically co-terminous with the present Metropolitan Boroughs of Westminster and Holborn. 4 Geo. III., c. 43, Hackney; 4 Geo. III., c. 53, St. Clement's Danes; 5 Geo. III., c. 81, Manchester; 6 Geo. III., c. 24, Southwark; 8 Geo. III., c. 21, City of London; 9 Geo. III., c. 21, Gainsborough; 9 Geo. III., c. 23, St. Bartholomew the Great; 9 Geo. III., c. 13, St. Martin's-le-Grand; 10 Geo. III., c. 22, Worcester; 11 Geo. III., c. 9, Winchester; 11 Geo. III., c. 33, St. John, Clerkenwell; 12 Geo. III., c. 18, Chatham, etc. The Acts quoted are, in most instances, local Acts providing for the whole of the street services of the localities to which they applied. There were, however, a considerable number of cases in which the Acts dealt with lighting only, or, more generally, with lighting and watching—*e.g.*, 12 Geo. III., c. 17, Islington; 16 Geo. III., c. 26, Camberwell; 16 Geo. III., c. 35, Boston; 46 Geo. III., c. 41, Boston, etc. In such cases the other street services were provided for by a separate Act of Parliament, and were often entrusted to a body distinct in personnel, as well as in statutory sanction. But this separation of functions becomes rarer as time goes on.

[1] See *e.g.*, 46 Geo. III., c. 26, Bristol; 46 Geo. III., c. 42, Lichfield; 49 Geo. III., c. 79, Swansea, etc. These Acts illustrate the kind of local peculiarities which frequently crept into the Act. The Bristol Act gave the Commissioners (who were the Mayor and Aldermen of the City) the same general power to regulate the public lighting as was contained in the Shoreditch Act, and in very similar language, but explicitly provides that the lamps shall be lighted and kept burning at least "from sun setting to sun rising." In the Swansea Act it was provided that lighting was not to be undertaken until the paving was completed, an additional indication of the fact that the paving was regarded as something to be accomplished once for all. In the Exeter Act of 1806 (46 Geo. III., c. 39), expenditure on lighting was limited to £700 a year, the limit of £200 imposed by the local Act of 1761 having proved too small. The extraordinary powers which crept into these Acts to the astonishment of legislators of a later generation can also be illustrated from these Acts. The Bristol and the Swansea Acts above cited both contained a clause whereby a person who either wilfully or carelessly damaged a lamp might be forthwith arrested without warrant by *any* witness of the damage, whether constable, watchman, or commonplace man (or woman)

(*e*) *Watching.*

The normal local Act usually provided for the institution and maintenance of a local police force, or to use the older term, a watch. The ancient obligation on the inhabitants of corporate towns to keep watch and ward was falling, or had already fallen, into desuetude by the beginning of the eighteenth century. In the newer unincorporate towns, and especially in the great extra-mural London which was rapidly growing up, the unwilling services of parochial or manorial guardians of the peace, the head boroughs, constables, and beadles, no longer afforded protection to the peaceful inhabitant against the terrors of an early eighteenth century night. The parish beadles, where appointed, were useless and costly.

"The bedels employed . . . for want of a proper regulation and government of them, have been of great charge and little use."[1] Some new organisation, some body of men who would enable a well-conducted parishioner to sleep quietly in his bed was plainly needed. . . . "The keeping a sufficient strong and well-regulated watch, in the night time, . . . will at all times be of great importance for the preservation of the persons and properties of the inhabitants; . . . and is, at this time, become so much the more necessary as the number of burglaries, robberies, and other outrages, and disorders, have, of late, much increased."[2] Legislation, therefore, was necessary.

The organisation of a watch under powers contained

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in the street, and taken before a justice, and dealt with summarily. The fines leviable upon contractors neglecting their duties were often to be imposed by the Trustees themselves, and such judicial powers were exercised, *e.g.*, by the Trustees for lighting the parish of St. Bartholomew's the Great, where the contractor is fined five shillings for each lamp neglected. (MS. Vestry Mins., May 11th, 1814.)

[1] 9 Geo. II., c. 13, St. Paul's, Covent Garden, preamble; 9 Geo. II., c. 19, St. Anne's, Soho, preamble.

[2] Petition from the principal inhabitants of St. Andrew, Holborn above the Bars, St. George the Martyr, and the Liberty of Saffron Hill, Hatton Gardens, and Ely Rents. (*H.C. Journals*, March 10th, 1737.)

in a local Act of Parliament appears not to have occurred at anything like so early a date as the provision of paving, cleansing, or lighting. The earliest examples which I have met occur in 1736, in which year two Acts, each for the sole purpose of providing a "watch," were obtained for the neighbouring parishes of St. Paul, Covent Garden,[1] and St. Anne, Soho.[2] From 1736 onwards, however, the provision of a watch becomes a common subject of local legislation, either in Acts for the provision of a watch alone, for watching and lighting together, or for the general regulation of an urban area. As time goes on separate legislation for the specific function becomes less frequent, and the normal provision for watch is contained in an Act for paving, lighting, cleansing, watching, and otherwise improving a particular neighbourhood.[3] The clauses in local Acts relating to the watch were comparatively simple in their character, and show neither much development with the passage of time, nor much local variation. The St. Paul's, Covent Garden, Act provided that the commissioners to whom the administration of the Act was entrusted should fix the number of watchmen and

[1] 9 Geo. II., c. 13.

[2] 9 Geo. II., c. 19. None of the following Acts contain watch clauses: 8 and 9 Wm. and M., c. 17, the Haymarket; 8 and 9 Wm. and M., c. 57, London, Westminster, Southwark, and the Bills of Mortality; 11 and 12 Wm. III., c. 23, Bristol; 6 Anne, c. 42, Bath; 7 Geo. I., c. 19, Bath; 12 Geo. I., c. 25, St. James's Square; 1 Geo. II., c. 20, Canterbury; 2 Geo. II., c. 11, London, Westminster, Southwark, and Bills of Mortality.

[3] Examples of special Watch Acts are those for St. Paul's, Covent Garden, and St. Anne's, above cited (10 Geo. II., c. 25), the Liberty of Saffron Hill, Hatton Gardens, and Ely Rents: 9 Geo. II., c. 17; 14 Geo. III., c. 90, St. Margaret's and St. John's, Westminster; 16 Geo. III., c. 26, Camberwell and Peckham. Such examples become very rare, especially in the provinces, when the process of local legislation advances.

For examples of Act for lighting and watching only, are (in addition to those already quoted *sup.* p. 191, *n.*): 3 Geo. III., c. 55, Newcastle-on-Tyne; 32 Geo. II., c. 50, Guildford; 13 Geo. III., c. 61, Kingston-on-Thames; 16 Geo. III., c. 25, Boston; 36 Geo. III., c. 5, Wakefield; 3 Geo. IV., c. 14, Chorlton Row, Manchester; 5 Geo. IV., c. 53, Ashford. They are comparatively rare after 1750.

Examples of the third type are very numerous: See 10 Geo. II., c. 6, Salisbury; 9 Geo. III., c. 32, Rochester; 9 Geo. III., c. 10, Windsor; 37 Geo. III., c. 10, Northampton, etc.

beadles to be appointed (provided that there should not be more than one beadle for each ward), and should actually appoint them, fix their wages, and allowances, and make all necessary regulations for the conduct of the watch. The characteristic of these early Acts was, however, that the new watch was not to displace the constable from his office. The ancient functionary was to be retained, and the new, paid, regulated force put under his leadership. Dogberry was to have a paid, and not an amateur force; and his own duties were, by statute, to be rendered more definite. In St. Paul's, Covent Garden, from May 3rd, 1736, one of the constables was, in his turn, to attend and keep watch within the parish, between nine at night and seven in the morning from September 29th to March 30th, and between ten at night and five in the morning for the remainder of the year. The constable on duty (with the assistance of the watch) was to apprehend night-walkers, malefactors, and suspected persons, and, as soon as might be, take such before one or more of His Majesty's Justices of the Peace for Westminster. There could be little rest for the faithful constable, for, " twice or oftener at convenient times on every night " he was to go about the parish and take notice whether the watchmen were doing their duty. If any watchman were found misbehaving or neglecting his duty the constable was to give notice of the fact to one of the churchwardens in order that a vestry might be called for the examination and punishment of the offender.[1] In the absence of the constable, his guardian and leader, any watchman was empowered and required to apprehend the night-walkers, malefactors, and suspected persons. Further, in order to maintain the self-respect and reputation of the nightly watch of St. Paul's, Covent Garden, it was solemnly enacted that no hired or menial

[1] In this Act the vestry with a half-dozen named persons were Commissioners for the administration of the Act.

servant should be chosen a member of the watch;[1] though the promoters were also careful to provide that no one appointed a watchman (or, indeed, paying the watch rate) should thereby gain a settlement in the parish. It was also thought necessary to enact in this, as in a number of later Acts, that persons paying watch rates under the Act should not be liable to watch and ward under the statute of Winchester (13 Edw. I.).[2]

The differences between the watch clauses of developed

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[1] The object may have been to prevent the watch being recruited from the followers of the young bloods, whose excesses it was duty of the watch to repress.

[2] Apparently the old liability to watch and ward was no longer enforced in the central parishes of London, but the inhabitants had informally commuted their ancient liability to personal service into a money payment, which payment was not legally recoverable. Thus the preambles to both the St. Paul's and the St. Anne's Acts recited: "That the methods hitherto practised of raising moneys for maintaining and paying the . . . Bedels have been . . . precarious and unwarrantable"; and power to make a proper rate was sought and obtained. In the Holborn parishes which petitioned for an Act in 1737, the difficulty of maintaining a watch without any solid financial basis was the foundation of the appeal for legislation. The Committee of the House of Commons, to whom the petition for a Watch Act to be applied to the Holborn parishes was referred, reported that in the parish of St. George the Martyr "there was a pretty good watch kept; and the assessments made upon the inhabitants for defraying the same were generally paid pretty cheerfully; yet that robberies were every now and then committed, and sometimes there was difficulty in raising the money, from the refusal of some person to pay the same, in which case they knew of no compulsory law to enforce the payment thereof." In Saffron Hill, Hatton Gardens, and Ely Rents, where there was "a great defect of watch," and robberies and other outrages were very frequent, many of the inhabitants refused to pay rates, and there was no power to enforce payment. (*H.C. Journals*, April 7th, 1737.) The inhabitants of St. Andrew, Holborn, however, thought they could get on very well without legislation, and strenuously opposed the inclusion of their parish in the proposed measure. They state "that the petitioners and the former inhabitants of the said Liberty, have time immemorial among themselves regulated their watch and Beadles, not only in a regular but cheap manner, but to the peace and welfare of the inhabitants of the said Liberty by raising a rate among themselves, and paid the charge thereof, without laying any part of such rate upon the poor inhabitants" . . . . and they point out that the Liberty of Saffron Hill, Hatton Gardens, and Ely Rents is a distinct Liberty from their parish, at least in the matter of rates, and pray to be left out of the Bill. *Petition of the Churchwardens, Overseers, and principal inhabitants of St. Andrew, Holborn above the Bars.* (*H.C. Journals*, April 27th, 1737.) They were left out. The Act of 10 Geo. II., c. 25, was for regulating the nightly watch and Bedels within the Liberty of Saffron Hill, Hatton Gardens, and Ely Rents alone.

local Acts of the early nineteenth century and the provisions quoted above are not really great. The constable and headboroughs disappear from the Act; the provision for the regulation and government of the watch tends to be more detailed and specific; and clauses are usually inserted authorising the provision of watchhouses and watchboxes, arms, and, sometimes, ammunition for the watch, specific penalties for interference with watchmen in the execution of their duty, and specific penalties on publicans harbouring watchmen during their hours of duty.[1] In some cases the acting body could reward watchmen disabled, wounded, or hurt in the execution of their duty as they thought reasonable or desirable.[2]

There were some local variants of or additions to the above normal provisions. In Islington the local commissioners took power to pay any of the peace officers belonging to the newly-established police offices for any services specially rendered to the parish; and they were also granted power to pay the constables and headboroughs for any extra services beyond the duties required of them by virtue of their offices, or by the command of the vestry, whether these services were performed within or without the parish.[3] This is one of the rare cases at so late a date where the ancient officers appear at all.

The Exeter Act of 1806[4] stands out clearly from the common run of the legislation of the time, inasmuch as the power to appoint and govern the watch, as well as to determine the pay of the watchmen, is entrusted to the

[1] See for all the above provisions: 44 Geo. III., c. 19, Milton, Kent; 44 Geo. III., c. 63, St. Nicholas, Deptford; 46 Geo. III., c. 1, Islington; 46 Geo. III., c. 45, Lewes; 49 Geo. III., c. 79, Swansea; 3 Geo. IV., c. 14, Chorlton Row.

[2] See 44 Geo. III., c. 53, St. Nicholas, Deptford; 3 Geo. IV., c. 14, Chorlton Row, etc.

[3] 46 Geo. III., c. 1. Apparently the Constables were not at this date (1806) in command of the watch. For the Act specifically provides for the appointment of paid supervisors of the watch, whose duties, wages, etc., were entirely at the discretion of the Commissioners. *Ib.*, sec. 10.

[4] 46 Geo. III., c. 39.

Justices of the Peace for the city in Quarter Sessions, and the cost of the watch is to be defrayed not out of the special watch rate, nor from the statutory rate imposed for general street services by the local Act, but out of the County Rate for the county of the city. Similarly the Swansea Act of 1809[1] has its minor local peculiarity. The townsmen of Swansea were economical and believed that there was a due order of municipal service to be observed. Here the watch was only to be organised when the town had been duly lighted, just as lighting was to be postponed to paving. Finally the Act passed for the district of Chorlton Row (Manchester) in 1822, in addition to containing the usual watch clauses, prescribes the Sunday duties of the beadles, who, on that day, are to apprehend those loitering to the annoyance and obstruction of passengers, those playing pitch and toss or other games in the streets, and above all, any persons setting dogs on to fight, or any way assisting at or abetting dog fights, and all others disturbing the public peace.[2]

Such are, perhaps, a sufficient example of the small variations reflecting in the clauses of the local Acts the special needs of localities or the personal predilections of promoters.

(*f*) *Cleansing.*

Whatever service remained unprovided for in the local Acts of the eighteenth century provision for the cleansing of the streets was never entirely lacking. The reason is obvious. It was possible, however inconvenient it might be, to live, even in a growing town or in a great city like the Metropolis itself, whilst streets remained unpaved, unlighted, and unwatched, but, if there were no organisation for preventing the accumulation of filth in the streets life became almost impossible, "The poorer sort of people daily throwing into the . . . streets all the dirt, filth, and coal ashes made in their

[1] 49 Geo. III., c. 79.

[2] 3 Geo. IV., c. 14.

houses." Unless measures were taken to prevent the calamity, a residential square would become "a receptacle for rubbish, dirt, and dunghills. . . ."[1]

Confining ourselves to the preambles of local Acts alone, and omiting altogether the evidence to be gathered from the newspapers and pamphlets of the time, it would be easy to accumulate evidence that, had nothing been done to modify the methods by which the people commonly disposed of their refuse, or to deal with the results of those methods, the condition of the streets would permanently have been such " that the subjects of the Crown could not pass through the same on their lawful occasions."[2] It is, therefore, not surprising that almost every local Act passed from the City of London Act of 1662 onwards, if it dealt with street services at all, provided some machinery for securing that the streets should be cleansed.

As in the case of paving, lighting, and watching, the provisions of local Acts as to cleansing point to the existence of ancient machinery for the exercise of the function henceforth provided for by statute. No doubt the ancient municipal corporation, in one way or another, and more or less imperfectly, cared for the cleansing of the streets. No doubt also the manor authority, through the machinery of its ancient courts, could do much to suppress the nuisance of street uncleanliness. Both these organisations appear to have appointed " scavengers and rakers," and, as the manor in an extra-corporate place often failed in vigour proportionately to the advancing urbanisation of its area, the parish organisation, maintained in effectiveness by the continuous imposition of new duties, did something by spending money, perhaps illegally, out of the church or constable's rate, to mitigate the prevailing filthiness.[3]

[1] 2 Wm. and M., sess. 2, c. 8, London, Westminster, Southwark, and the Bills of Mortality, preamble.

[2] 16 Geo. II., c. 6, Charterhouse Square, preamble.

[3] Thus in London, that ancient body, the Corporation of London, had issued orders for the purpose of securing the cleansing of the streets. On

It is noteworthy, too, that some slight provision for street cleansing was made in the general legislation of the eighteenth century. It was enacted in a general Highway Act of 1716[1] that, as no provision had been

the passing of 13 and 14 Chas. II., c., the Commissioners of Sewers appointed two of their number to enforce the execution of that Act. (MS. Orders of Commission of Sewers, July 17th, 1662.) In the preamble of the Act of 1690, passed to replace the Act of 13 and 14 Chas. II., which had expired, we get evidence that parishes could not enforce the offices of obligation, which, probably after the decay of the manorial organisation they had, extra-legally created, nor could they enforce payment of the rates they attempted to levy. . . . " Many persons in the out parishes in Middlesex and other parishes in the limits aforesaid, which have been chosen to serve the office of scavenger, refuse to take the said office upon them ; and others who have been rated and assessed towards the cleansing and carrying away the dirt and soil out of the streets have refused to pay the rates assessed upon them, there being no law in force to compel them thereunto, so that no person can be employed to be taken to carry dirt out of the said streets. . . ." (2 Wm. and M., sess. 2, c. 8.)

Incidentally it may be noted that the number of cases in which subsequent local Acts for towns in all parts of England refer to the offices of raker and scavenger seems to point to the common appointment of such offices by parishes, manors, or municipal corporations. At Gainsborough the right of the Lord of the Manor to the tolls of the market carried with it the corresponding obligation to cleanse certain parts of the streets, probably those in which, or near which the market was held, and we also learn that in that borough the " great part " of the streets had been cleansed by the constable, the cost being paid out of the constable's rate to the extent of £25 a year, and the statute makes such a sum payable from the same source to the Trustees upon whom the duty is, by the statute, imposed. (9 Geo. III., c. 21.) At Plymouth, the Corporation had " from time to time, at the expense of the Corporation, found and provided two scavengers, rakers, or cleaners of the streets," and were for the future, in consideration of their exemption from this duty, to pay the Commissioners under the local Act £40 a year (10 Geo. III., c. 14), though the appointment and payment of these officers was re-imposed on the Corporation by the subsequent Act of 1772 (12 Geo. III., c. 8), the Commissioners under the statute retaining their power to supervise the work. An official scavenger was appointed by the Court Leet of the Honour and Manor Royal of East Greenwich, and the Deptford Act of 1756 (27 Geo. II., c.), expressly enacts that presentments of nuisances were to be made to him in order that they might be dealt with at the Court Leet. It seems probable that the scavenger was merely a person who supervised the streets so far as to be responsible for presentments of nuisances ; and proceedings at a Court Leet, even when the Court was alive, formed a cumbrous and ineffectual method of securing street cleanliness.

[1] 1 Geo. I., c. 52. An Act for making the laws for Repairing the Highways more effectual. Some use seems to have been made of the Acts inasmuch as in 1735 another Act (9 Geo. II., c. 18), was passed in order to clear up ambiguities in the wording of the first Act. In market towns, not being boroughs, and having no separate Quarter Sessions, the County Justices made some attempt to enforce these Acts.

made for the purpose by any former law, the justices of the peace in any city or market town, at Quarter Sessions, might appoint persons for scavenging and cleansing the streets, and might also order the streets to be repaired. To give effect to these powers they might order an assessment of not more than sixpence in the pound to be made. However, even in cities and market towns the method of proceeding by special local Act seems to have been preferred, for the activities of the magistrates were in all probability of a very spasmodic character, and a continuous service was, in this matter, all important.

Except for one or two peculiar arrangements the machinery provided for securing street cleanliness was of three kinds:—

(i) The acting body was empowered to appoint scavengers, but the streets themselves were to be cleansed by the individual inhabitants, the scavengers merely removing the heaps of dirt and refuse resulting from these individual labours, and themselves only cleansing such parts of the streets as adjoined dead walls, churches, and other public buildings, and the open spaces of the town.

(ii) The acting body was given power to appoint officers to clean the streets, or to make contracts for their cleansing, but the occupiers of property were to be under an obligation to cleanse the footpaths. The latter obligation might be left quite vague and general, or might apply to specific intervals or particular hours.

(iii) The acting body was given power to undertake directly or to contract for street cleansing, and no obligation with regard to this service was imposed on individuals.

A good example of the first of these arrangements is to be found in the Plymouth Act of 1770.[1] The Act provided, in carefully chosen words, that every occupier

[1] 10 Geo. III., c. 14.

of houses and other buildings not being dead walls should sweep and cleanse the streets, lanes, etc., adjacent to those houses or buildings to the middle of the streets, once a week, on Fridays, between the hours of six a.m. and two p.m., or on such other days and at such other times as the commissioners appointed under the Act should determine. Further, they were to collect the dirt, in such a way as to cause the least obstruction to passers by, in order that, in due course, it might be carried away by the scavengers. Every neglect with respect to these duties was punishable by a fine of two shillings. The street cleansing was thus to depend, in the main, upon the regulated efforts of the individual inhabitants. But the scavengers were to sweep and cleanse before all empty houses, dead walls, vacant grounds and places, churches, churchyards, chapels, the Guildhall, and other public buildings, as directed by the commissioners; any neglect in this duty was punishable by a fine of ten shillings for each offence. Similar provisions are to be found in the first Street Acts obtained for two of the greatest provincial towns, the Manchester Act of 1765[1] and the Birmingham Act of 1769.[2] But in Manchester the street sweeping was to take place twice a week, and in Birmingham the commissioners could arrange to do the work for inhabitants on payment. In other words inhabitants could compound for their "statute duty."[3] The Manchester Act contains the curious, but at the time not uncommon, provision that inhabitants were to keep their dust, ashes, and other refuse *indoors* until collected by the scavenger.[4]

The second type is, at all events as soon as the local Street Acts begin to get numerous, *i.e.*, from about 1770

[1] 5 Geo. III., c. 81.

[2] 9 Geo. III., c. 54.

[3] See also 11 Geo. III., c. 44, Wakefield. In this case the cleansing was weekly, on Saturdays between six a.m. and six p.m.

[4] *E.g.*, see also 29 Geo. II., c. 87, Wapping. But here the refuse is to be kept in the "house, yard, or other premises"; no doubt "indoors" in the Manchester and other Acts, meant the curtilage of the house.

onwards, by far the most common. An early example of this type is the Act obtained for St. Luke's in 1754.[1] In this case the trustees were simply given power to enter into contracts for cleansing the streets, whilst the inhabitants were required to sweep the *footpaths* before their houses on every Tuesday and Friday either between the hours of seven and ten in the morning or between two and five in the afternoon under a penalty of five shillings for each omission.[2] Examples of this kind of provision could easily be multiplied as it remained the standard form down to 1835 at least. The variations are to be found only in the times appointed for the sweeping to be done.[3] Thus in the St. Martin's le Grand and St. Bartholomew the Great the sweeping had to be accomplished daily. By 1771 St. Luke's decided that twice a week was not enough even for a poor parish, and that the daily sweeping must be done before nine in the morning, except on Sundays, thus relieving the eary rising ratepayer from the dangers which had attended him for seventeen years. But twice a week is enough for the cathedral town of Worcester in 1780, and for the ancient Wiltshire town of Devizes in 1781, where, since there was, as there evidently was not everywhere, a distinct footway, it was cautiously provided that the area to be cleansed should extend for at least eight feet before the house. Truro was, however, content in 1790 with a space of four feet only. Sunderland and Bishop's Wearmouth demanded the same service three times a week; whilst Pontefract in 1810 required it every day, except Sundays, between six and

[1] 27 Geo. II., c. 25.

[2] Under the provisions of this Act any early-rising householder who did his sweeping before 7 a.m. might have been fined five shillings for his activity.

[3] See 9 Geo. III., c. 13, St. Martin's-le-Grand; 9 Geo. III., c. 23, St. Bartholomew the Great; 11 Geo. III., c. 46, St. Luke's; 20 Geo. III., c. 48, Goswell Street; 21 Geo. III., c. 36, Devizes; 30 Geo. III., c. 62, Truro; 20 Geo. III., c. 21, Worcester; 43 Geo. III., c. 59, Worthing; 50 Geo. III., c. 38, Brighton; 50 Geo. III., c. 25, Bishop's Wearmouth; 50 Geo. III., c. 27, Sunderland; 1 Geo. IV., c. 12, Hastings; 6 Geo. IV., c. 6, Stroud; 6 Geo. IV., c. 5, Ardwick; 6 Geo. IV., c. 78, Norwich, etc.

ten in the morning. At Hastings in 1820 such sweeping was required every morning, but Stroud, as late as 1825, satisfied itself with twice a week (on Tuesdays and Saturdays) between seven and nine a.m., very early rising not being encouraged in Gloucestershire. At Ardwick, a daily sweeping was doubtless necessary, but at Norwich discretion was left with the commissioners who could require the footpaths to be swept on such days and at such hours as they ordered.[1] In almost every case these Acts contained clauses specifically obliging occupiers to remove snow and ice from before their dwellings, usually under the same penalties as those enforcing the daily sweeping. Such a clause is contained in Michael Angelo Taylor's Act, an adoptive codifying Act, which is still in force in the Metropolitan area.[2]

The third type of Act, that which provided that the commissioners appointed under its provisions should, through officers appointed by them, or by the agency of contractors, cleanse the streets, and imposed no obligation of actual service as opposed to the payment of rates upon individuals, is comparatively rare in the period. The Acts obtained for Beverley in 1726,[3] Bristol in 1766,[4] Dorchester in 1776,[5] Sculcoates in 1801,[6] seem to have been of this type, and in the Henley Act of 1781 the corporation, which was in this case the acting body, was specifically empowered to contract for cleansing the footways.

It will be understood that the idea of exacting per-

[1] Note that the penalty for omission varied also from two shillings at St. Luke's to a maximum of twenty shillings at Macclesfield (6 Geo. IV., c. 196), and as much as forty shillings at Tormoham, in Devonshire (5 and 6 Wm. IV., c. 45). The commonest penalties were five shillings and ten shillings.

[2] 57 Geo. III., c. 29.

[3] 13 Geo. I., c. 4.

[4] 6 Geo. III., c. 34.

[5] 16 Geo. III., c. 27.

[6] 41 Geo. III., c. 30.

sonal service, of enforcing taxation in kind, though abandoned at a comparatively early date with regard to the actual streets, survived longer with regard to the sweeping and cleaning of footpaths and pavements than in any other instance. The reasons for this are obvious. Indeed, in most towns the service is still undertaken voluntarily. It is the occupier who still cleans the pavement adjoining his house or shop, not under the compulsion of even a forty shilling fine, though that may still exist, but by the gentler suasion of self-respect which collective regulation has done so much to foster.[1]

(g) *The Use of the Streets—Control of Nuisance and Obstruction.*

The reader whose fortitude has enabled him to follow this account of the contents of local Acts so far will have realised that the study of eighteenth century local improvement legislation is very largely the study of man as a street using animal. The central object of a very great majority of the local Acts which apply only to urban areas[2] was to enable streets to be used with convenience and safety. It was for this object that, by one arrangement or another, the paving, lighting, watching, and cleansing of the streets was provided for. Of such provisions, as has already been remarked, those for cleansing were least frequently omitted. It was, however, imperative, not only to provide machinery for cleansing, but to forbid such uses of the streets as would prevent that machinery being used in vain. In-

[1] In a few exceptional cases street cleaning was entrusted by local Acts to bodies other than the statutory authorities created for the general purposes of the Act. In the Beverley Act of 1726, where the Corporation was the statutory Authority under the Improvement Act, cleansing was entrusted to the Borough Justices in Quarter Sessions (13 Geo. I., c. 4). At Colchester, cleansing public places was entrusted to the Surveyors of Highways, and was to be paid for out of the Highway Rate (23 Geo. II., c. 19). And similar provision was made in the Bristol Act of 1766 (6 Geo. III., c. 34); but these are all comparatively early Acts, and are quite exceptional.

[2] It is to be noted that we thus exclude the overwhelmingly numerous Turnpike Trust Acts, River Navigation Acts, and Inclosure Acts.

habitant occupiers would, with ante-prandial diligence, sweep the footways in vain, and the scavenger, proclaiming his presence "with bell, horn, clapper,, or with loud and distinct voice,"[1] would make a futile round, if householders were free to deposit "seacole ashes or the ashes of wood" before or against the fronts or sides of their neighbours' houses. Accordingly we find in the earliest local Acts provisions imposing penalties on any thus misusing the streets. This regulation of the use of the streets, starting with the suppression of the grosser habits of street uncleanliness, expands, and, by the end of the eighteenth century we find, even in Acts applying to comparatively small places, a comprehensive code of street regulations. This code exhibited local variations, but a large portion of the provisions in any Act were common to the whole body of Acts of that time.

The nucleus of provisions round which this street code grew up is to be found in the Act of 1662,[2] already more than once quoted, which applied to the cities of London and Westminster, Southwark and the whole area returning Bills of Mortality. These provisions were of three kinds. Those designed to prevent refuse being thrown into the streets, those intended to prevent the street area being used as a workplace, or to prevent the street being obstructed or encroached upon by some temporary obstacle, and those intended to prevent encroachment on the street space by obstructions of a more permanent character. This triple classification would probably apply to the great mass of street regulation clauses included in local Acts at all dates during our period. The fuller and more complex provisions of later Acts could, not unjustifiably, be regarded as developments or modifications of the comparatively simple clauses of this old, and, it is to be

[1] See 14 Chas. II., c. 2, London, Westminster, Southwark, etc.; 29 Geo. II., c. 87, Wapping, etc.

[2] 14 Chas. II., c. 2.

feared, ineffectual Metropolitan Act. The substance of its clauses, therefore, may be stated briefly:—

1. It was forbidden to any person to throw any ashes, dust, dirt, or other filth or annoyance before or against his, her, or their own dwelling house, building, or wall, under a penalty of five shillings for each offence. To create a similar nuisance in the neighbourhood of the houses or buildings of neighbours or other inhabitants, or of any church or church yard, or of any of the King's buildings or other public buildings, or in any public sink, vault, highway, or sewer or watercourse, or in any private vault or sink, was punishable by the heavier fine of twenty shillings; and, under the same penalty, inhabitants were enjoined to keep such refuse in their houses, backsides, or yards until the scavenger, announcing himself in the prescribed manner, came round, when it was their duty to carry or deliver such refuse to the scavenger.[1]

2. It was forbidden to hoop, wash, or cleanse any pipes, barrels, or other casks, or to set out empty coaches to make or mend, or rough timber to be sawn or wrought, in any of the streets, lanes, or open passages within the area to which the Act applied. The penalty for breach of this provision was also a fine of twenty shillings.

3. The commissioners under the Act were empowered to remove "all kinds of nuisances or any encroachments by sheds, stalls, bulks, stoops, posts, or walls beyond the old foundations of the streets." But, if the nuisance or encroachment had lasted for thirty years, then no removal was to take place without the payment of compensation, to be fixed, in default of agreement, in a manner prescribed in the Act.

Provisions of the same nature are to be found in almost every urban local Act of a comprehensive

[1] It may be that the "tips" still often given to scavengers originated in this practice. The scavenger was under no obligation to carry refuse to his cart or barrow, but doubtless many a householder or housewife induced him to do so for a consideration.

character passed between 1662 and 1835; but, until the reign of George II. was well advanced, such Acts are very rare, and they do not become common until about 1770. The earlier Acts were usually confined to one or two functions only. Thus, if we omit the amendments and re-enactments of the London Act just quoted, we find no Acts containing any but the most rudimentary nuisance clauses until about the middle of the eighteenth century.[1]

It may, however, be noted that the Act for cleansing and improving St. James's Square succinctly provided that any person who should "in any wise annoy the said square, place, or any part thereof by any filth, dung, ashes, or rubbish" should pay twenty shillings to the trustees of the Act on conviction before one justice. In the same Act also there was another brief provision that any person who should "make or continue any encroachment upon the said square," being convicted as above, should pay £50 to the trustees; perhaps a more drastic, if a more rudimentary provision than those commonly contained in later Acts.[2] The Westminster Paving Act of 1729[3] provided that those inhabitants who filled the obligatory offices of surveyors (created by this statute) should report defects in the pavement to the justices in Special Sessions, and such justices having examined these reports, might present to Quarter Sessions "any nuisances or obstructions relating to the cleansing or pavement of the streets," such presentments to have the force of presentments of highways. But the Act contained no other nuisance clauses whatever beyond

[1] The following Acts contained no nuisance clause at all: 22 and 23 Chas. II., c. 17, City of London; 1 Geo. II., c. 20, Canterbury; 7 Geo. I., c. 11, Yarmouth; the Watch Acts of 9 Geo. II., c. 8, St. Martin's-in-the-Fields; 9 Geo. II., c. 13, St. Paul, Covent Garden; 9 Geo. II., c. 17, St. Margaret, and St. John, Westminster; 9 Geo. II., c. 20, the City of London; 9 Geo. II., c. 19, St. Anne, Westminster; though all of them dealt either with paving, lighting, or watching.

[2] 12 Geo. I., c. 25, St. James's Square.

[3] 2 Geo. II., c. 11.

this application of the devices of the General Highway Acts to urban street conditions.

It was not until 1737 that any further provision for the specific purpose of preventing nuisances was included in a local Act. The Act then obtained for enclosing, paving, cleansing, and watching Red Lion Square[1] illustrates the tendency to admit very drastic penalties into these early local Acts, as well as the unsettled nature of the preventive machinery adopted. It was provided in the Act that the trustees were " not only to remove, but also to prevent all and all manner of annoyances, by filth, dung, ashes, rubbish, or otherwise "; and if anyone should " annoy the square " in the above manner he might be arrested, without other warrant than the provision of the Act itself, not only by any officers of the trustees, but by any owner of property in, or inhabitant of the square, who might forthwith " carry " the offender before a magistrate. On conviction the offender was to pay twenty shillings and costs to the trustees, and the justice was *required* to commit him to the House of Correction or the gaol until he (the offender) had caused the nuisance to be removed. As to encroachments, the trustees were empowered to put down, move, and abate every encroachment, and for that purpose might issue precepts to the Sheriff of Middlesex, who was required to execute the same, a mode of procedure not often repeated in later Acts.

In the same year, in the Salisbury Act,[2] the first of three clauses of the London Act of 1662 is repeated in substance, though the penalty prescribed for its breach is one shilling only, and this is the sole clause dealing with nuisances.

Up to 1740, therefore, the nuisance clauses are rare; and they tend to be less comprehensive than those of their Metropolitan forebears. After that date, as the

[1] 10 Geo. II., c. 15.

[2] 10 Geo. II., c. 6.

number of comprehensive Acts increases, the nuisance clauses grow in complexity, and soon after 1760 Acts containing provisions full enough to be called a street code make their appearance. The Westminster Act of 1762[1] shows a considerable advance upon that of 1729. The area of its application was narrower, but the provisions to be applied were widened in scope,[2] a phenomenon of not infrequent occurrence in Acts applying to London districts. Not only was it forbidden to throw dust, ashes, and other fully enumerated forms of filth into the streets, but driving coaches, carts, and waggons, or placing wheels, timber, or stone so as to form an obstruction or nuisance was forbidden. To leave vehicles in streets longer than necessary for loading or unloading was punishable by a fine of forty shillings; and to erect an enclosure for building or repairing buildings, without the consent of the commissioners, was subject to a cumulative penalty of twenty shillings for every twelve hours the nuisance remained. The reader will gather that, though the old Court Leet jurisdiction over nuisances was not abolished—it remains wherever the Court remains unto this day—in practice it was becoming necessary to deal with the street nuisances by positive statutory enactment which could be enforced by the ordinary magistrates at the instance of a new statutory authority. So the code gradually enlarged. Signs, signboards, projecting spouts, and gutters[3] were regulated or forbidden; dyers', scourers', and barbers' poles must come down; the posts, steps, bulks, stalls, show glasses, cellar flaps, steps, goods, wares, and merchandise, the dung holes and saw pits which obstructed the use of the pavements were to be

[1] 2 Geo. III., c. 21.

[2] The earlier Act applied to all places within the Bills of Mortality. That of 1762 applied to Westminster, St. Giles's, and the Holborn parishes only.

[3] See, *e.g.*, 6 Geo. III., c. 24, Southwark.

removed.[1] Traffic in the streets was regulated, driving or riding on footpaths prohibited, rough sports in streets forbidden, the exercise of obstructive or noxious trades in the streets made illegal. In a hundred ways the liberty of the individual to make himself disagreeable was limited in order that the right of every inhabitant to the legitimate use of the common thoroughfare might be preserved. The full significance of this regulative legislation will best be realised if we set out the provisions embodied in certain Acts passed after 1800, clearly understanding that nearly every one of such provisions is to be found in some Act prior to that date, and most of them in large numbers of Acts passed at dates between 1770 and 1800.

If we turn, for instance, to the Act of 1801,[2] which applied to Sculcoates, part of Kingston-upon-Hull, we shall obtain some idea of the code developed by the beginning of the nineteenth century out of the simple clauses of the Restoration Act for cleansing London. The substance of that street code was as follows:—

No person was to throw, cast, or lay any dirt, dust, dung, ashes, or other filth into the streets or public places, or into any of the rivers, brooks, or watercourses in the parish, under a penalty of five shillings and costs. Builders were to remove lime, rubbish, and the like within reasonable time of receiving notice to do so; to this provision no specific penalty was annexed.[3] No necessary houses or privies were to be emptied or cleansed save between ten p.m. and eight a.m. from September 22nd to March 22nd, and ten p.m. and seven a.m. between March 22nd and September 22nd, nor their contents removed within those hours, except when mixed with ashes or other manure for the purpose

[1] See, *e.g.*, 12 Geo. III., c. 68, St. Sepulchre; 20 Geo. III., c. 48, Goswell Street.

[2] 41 Geo. III., c. 30.

[3] It is in details as to penalties, more perhaps than in any other respect, that such provisions in local Acts differ from each other.

of being immediately carted away for the owner's use. Breach of this regulation was to be followed by a fine of not more than twenty shillings.

Further, it was forbidden, *in any street or place*, to burn, dress, or cleanse any cork; to hoop, fire, cleanse, wash, or scald any cask;[1] to empty the contents of any cask therein; to set any cask, tub, pail, bucket, or other matter or thing so as to cause obstruction or impediment; to wash any linen, vegetables, or other things at any of the public pumps or conduits; to hew, saw, or cut any stone, wood, or timber, or to bore any timber except for building a house (though this was not to apply where the commissioners, as they might, allowed enclosures for building purposes); to repair any coach, waggon, sledge, or carriage, except in case of accident, such that the vehicle could not be removed for repair; to shoe, or bleed any horse except in case of accident, or to turn loose any horse, ass, or other beast therein; for any driver to ride on the shafts or in or on any part of any waggon, cart, or sledge, or other carriage, without reins, or on any of the horses or cattle drawing such a vehicle; or to suffer any horse or cattle so engaged to go any pace faster than a walk; to bait, drive, or worry any bull, bear, or other animal, with dogs or otherwise; to drive any cattle or to ride any horse or beast so furiously as to cause personal danger to any one, to show or expose any stallion or stone horse; to expose to sale any horse or other beast, or to ride, drive, or lead the same in any carriage or otherwise by way of exercise or for the purpose of breaking in the animal; to play at any game of football or fives or other games troublesome to the inhabitants; to make any bonfire or let off any musket or pistol, or fire any crackers or squibs[2] or other

[1] It would be difficult to find any comprehensive urban street Act between 1662 and 1835 that did not specifically prohibit such dealing with casks in the streets.

[2] Or "serpent." See 48 Geo. III., c. 2, Winchester, penalty £5. To blow any horn or trumpet within the parish was forbidden at Greenwich. See 4 Geo. IV., c. 70.

fireworks; to suffer any ferocious dog or bitch to go unmuzzled after notice given by any person to the owner or any of his servants to confine the same; to sift, throw, cast, or lay any ashes or any dust, muck, dung, soil, filth, rubbish, refuse of garden stuff, blood, offal, carrion, or any other offensive matter or thing; to hang up, place, or expose to sale any goods, wares, or merchandise whatsoever, or any fruit, vegetables, or garden stuff, butcher's meat or any other matter or thing on, or projecting over the foot or carriage way, or so as to obstruct or incommode the passage of any person or carriage therein, *to commit any other kind of obstruction or annoyance*, to kill, slaughter, or singe, scald, dress, or cut up any animal, wholly or in part, to cause or permit any blood to run from any slaughter-house, butcher's shop, or shambles into the same—to do any of the whole breathless category (which was what no properly conducted inhabitant of Holderness would do) was punishable by a fine of not more than 40s.

So much for the streets, the whole street, including the foot pavement. There remained the special protection of the foot pavement. Things lawful on the street less the foot pavement were not lawful on the foot pavement itself. To be precise, the following things were forbidden: To carry a sedan chair not having a person therein; to carry a flambeau, link, or torch, other than for the purpose of lighting a sedan chair, or lighting (in another sense) a public lamp; to run, draw, drive or *carry* any truck, wheel, sledge, wheelbarrow, bier, hand-barrow, or carriage, to roll any cask other than for the necessary loading or unloading thereof, wilfully to ride, lead, or drive any cattle of any kind or any beast whether loaded with coal, vegetables, or other goods or wares for sale or not; to do any of these things entailed, on conviction, the payment of a fine not exceeding 40s. with costs.

The Act also gave statutory sanction to the ancient manorial practice of impounding wandering animals.

By 1801 the Pinder may have passed out of existence, at Sculcoates, but he was replaced by a modern representative; for it was enacted that if any horse, beast, or animal were found wandering in the streets or other public places it should be lawful for any officer appointed by the commissioners, and also for any inhabitant with the consent, in writing, of the Lord of the Manor, to seize and impound the same in the common pound of the parish. The owner could obtain the release of his beast on payment of not more than 20s. to the treasurer of the commissioners, and 1s. to the person who impounded the beast, together with reasonable expenses of impounding and keeping it. If such a payment were not made within seven days of the impoundment, the animal might be sold after seven days' notice of the intended sale had been served upon its owner, or, if the owner were not known, three days after notice had been given by advertisement in a local newspaper. The proceeds of sale were to be kept by the treasurer and returned to the owner when found, less the penalty and the expenses of impoundment or sale.[1] There are a good many cases, too, in which vehicles left standing in the streets when not necessary for loading or unloading, or longer than a specified period, could be impounded and sold under similar conditions.[2]

The above are tolerably comprehensive provisions for preventing the misuse of the streets. Such a code is to be found in almost every street Act obtained between 1760 and 1835, and from about 1780 onwards each Act would be found to contain nearly all the above prohibitions as well as, in some cases, provisions peculiar to itself. A tolerably long catalogue of forbidden acts not found in the Sculcoates Act is not difficult to compile. For instance, it was often forbidden to dress or

[1] See also 11 Geo. III., c. 33, St. John's, Clerkenwell; 48 Geo. III., c. 2, Winchester; 50 Geo. III., c. 38, Brighton; 6 Geo. IV., c. 5, Ardwick, etc. Provision for impoundment are very common in the Acts.

[2] See for an early example, 6 Geo. III., c. 34, Bristol.

farry any horse in the streets except in case of accidents; to bind or make the wheel of any carriage, to sift, screen, or slack any lime except within a hoarding permitted by the commissioners, to beat, dust, or clean any carpet.[1] At Beverley it was thought necessary to forbid any person to keep or feed pigs with offal and entrails of beasts, blubber, carrion, horse-flesh, or blood, or other such food so as to cause unwholesome smells in the streets, or to make or wilfully drop any ordure, dirt, or filth in the streets.[2] To suffer swine to go at large was an offence specially forbidden in many local Acts.[3] At Guildford it was forbidden to roll a cask on the foot pavement for more than ten yards,[4] while at Deal it was forbidden to place furze, ferns, or hurdles in streets or public places.[5] To set up or throw at any cock or fowl in the manner called cock throwing was an offence at Winchester and many other places;[6] while to roll hoops or fly kites so as to obstruct the passage of the streets was forbidden at Stourbridge.[7] It would not be easy to drive a coach and six through a clause which imposed a penalty of twenty shillings upon any persons laying or placing in the streets any timber, iron, bricks, stones,

[1] 48 Geo. III., c. 86, Skinner's Estate (St. Pancras). Carpet beating in the streets figures as an offence very frequently after 1800. See *e.g.*, 48 Geo. III., c. 87, Beverley; 52 Geo. III., c. 14, the Liberty of the Clink, Southwark; 52 Geo. III., c. 73, Deal. By the last Act, carpet-beating in the streets might proceed before 7 a.m. in summer, and 8 a.m. in winter. By 5 Wm. IV., c. 18, Westminster, shaking hearthrugs or door mats in the streets was specifically forbidden. Door mats, however, might be shaken before 8 a.m. At Tormoham, Devon, it was an offence punishable by a fine not exceeding £10, to beat, shake, or dust "any carpet, footwear, rug, or other furniture, or soot, ash, coal, or dust bag" in the streets.

[2] 48 Geo. III., c. 87, Beverley. Penalty for each breach of these provisions was forty shillings.

[3] See 6 Geo. III., c. 72, Richmond. Penalty, forty shillings, etc. Poultry were specifically mentioned in the Westminster Act, 5 Wm. IV., c. 18.

[4] 52 Geo. III., c. 51.

[5] 52 Geo. III., c. 73.

[6] 48 Geo. III., c. 2; 4 Geo. IV., c. 70, Greenwich, etc.

[7] 6 Geo. IV., c. 19.

lime, mortar, hay, straw, coals, boards, casks, tubs, barrels, goods, wares, merchandise, materials, articles, articles, matters, or things whatsoever.[1] To throw any matter upon the streets except for the purpose of cleansing them was specially forbidden at Stroud.[2] To wash carriages in the streets was a punishable offence at Salford.[3] And at Manchester *chimney sweepers* were not to throw soot into streets, whatever the folk might do.[4]

The provisions as to dogs contained in the Sculcoates Act are developed considerably in later Acts, it being frequently enacted that to permit any bull-dog, or mastiff, or any ferocious dog of any other species to go at large not being muzzled, or to permit any dog whatsoever to go at large in any township, after public notice given in a local newspaper directing dogs to be confined "on account of the suspicion of the existence of canine madness" should be an offence punishable by fines varying from twenty shillings[5] to five pounds.[6]

The ordinary clothes-line was not beneath the notice of the legislator, for it was frequently enacted that any person placing or erecting any pole or poles, line or lines, from any window, parapet, or building, and extending into and over or across any of the streets or suspending and hanging therefrom "any bedclothes, linen, woollen, wearing apparel, or any other thing," should forfeit a sum not exceeding five pounds.[7]

Numerous other offences relating to the foot pavements only not infrequently appear; for instance,

[1] 6 Geo. IV., c. 8, Ardwick. The substance forming the obstruction was to be impounded, and, in default of the penalty and costs being paid within four days, sold.

[2] 6 Geo. IV., c. 6.

[3] 11 Geo. IV., c. 8.

[4] 11 Geo. IV., c. 47.

[5] 6 Geo. IV., c. 5, Ardwick.

[6] 6 Geo. IV., c. 19, Stourbridge, etc.

[7] 6 Geo. IV., c. 78, Norwich; see also 6 Geo. IV., c. 6, Stroud; 6 Geo. IV., c. 19, Stourbridge; 5 Wm. IV., c. 18, Westminster, etc.

dragging timber or logs of wood on the footpath,[1] placing *tents* as well as stalls and show-boards on the footpath,[2] leaving a horse or other beast either tied or untied at any house or door so as to obstruct the foot pavement,[3] placing furniture on the footpaths,[4] carrying any large show-board or placard on the footways.[5]

Finally, we may notice, before leaving the misuse of the streets by Acts of a non-continuing character, that about 1830 provisions for preserving decency of language and personal behaviour in the streets began to be introduced; to use obscene or indecent language or indecently to expose the person in the streets, or to distribute obscene or indecent pamphlets or prints were made special offences by local Act within limits as large as Salford,[6] or as small as Tormoham in Devon.[7]

Just as the code for preventing the misuse of the streets, by acts of an intermittent, or at least of a non-continuing nature, grew to a great bulk, so did the provisions for preventing the misuse which took the form of a permanent encroachment or obstruction or some nuisance of a continuing character. The provisions of this kind contained in the London Act of 1662 have already been quoted.[8] If we make a jump of over a century to the Southwark Act of 1766[9] we find that in that Act, elaborate as it is in many respects, the provisions as to continuing encroachments retain an almost seventeenth century simplicity. It provided that the acting body should cause all signs to be fixed or placed on the fronts of the houses to which they

[1] 6 Geo. IV., c. 5, Ardwick; *ib.*, c. 6, Stroud, etc.
[2] Stroud Act, etc.
[3] Ardwick Act.
[4] 11 Geo. IV., c. 8, Salford.
[5] 5 Wm. IV., c. 18, Westminster.
[6] 11 Geo. IV., c. 8, Salford.
[7] 5 and 6 Wm. IV., c. 45, Tormoham.
[8] *Supra*, p. 205, 206.
[9] 6 Geo. III., c. 24.

belonged,[1] and that they should cause all sign-irons, posts, boards, gutters, or other things occasioning any obstruction or annoyance to be removed or altered as the acting body might think proper. For the future, too, all signs, boards, spouts, and gutters were to be placed or fixed on the fronts of the houses, shops, warehouses, or buildings to which they belonged, and not otherwise. And any person contravening the foregoing provisions, or in any manner occasioning any encroachment or annoyance, was to forfeit not more than five pounds.

The elaborations which are to be found in later Acts consist chiefly in the longer lists of permanent obstructions, which, existing, might be removed, and the creation of which after the date of the Act became a punishable offence. Some Acts also describe more minutely the particular modes and positions in which signs and the like may be placed. The Bristol Act of 1766, for instance, provided that signs and signboards should be placed "close and flat to the walls or on the fronts of buildings,"[2] a provision included in most subsequent Acts. In the same Act it is directed that smiths' and farriers' sheds projecting into or hanging over any of the streets should be removed. And it is a curious fact that sixty years later we get smiths' shops again the subject of special local provisions at York; for, by an Act of 1825 applying to that city, it was enacted that any blacksmith omitting or neglecting to rail or guard in front of his shoeing shed should be fined not more than forty shillings,[3] whilst at Stourbridge it was an offence punishable by a fine of not more than five pounds for any person having a "smith's shop" with a "window" . . . "fronting any of the streets

[1] Apparently the signs were frequently placed on posts fixed in the street or foot pavement, or that they were hung on irons projecting over the footway. In short, mediæval sign practice survived.

[2] 6 Geo. III., c. 34.

[3] 6 Geo. IV., c. 127.

not by good and close shutters every evening after it becomes twilight," to bar and prevent the light from shining into or upon the streets.[1] Besides providing for the removal and forbidding the future erection of bulks and bulks sashes[2] the developed Act banned pent houses, porches, sheds, projecting windows, palisades, rails, posts, steps, areas, cellar holes, cellar windows, cellar doors, hatchways, and, as the clause usually ended, "any other obstructions and projections whatsoever."[3] Other obstructions mentioned are blinds, shades, coverlids and awnings, scrapers,[4] chains,[5] barbers' poles, and butchers' hooks, doors and gates opening outwards,[6] gratings, frontsteads, courtyards,[7] pilasters,[8] stumps, trees, cesspools, cisterns, and reservoirs for water.[9]

The usual procedure in Acts after 1800 for dealing with such structural impediments, though perhaps less peremptory than that contained in early Acts, showed little respect for such rights of property as interfered with public convenience. It was usually provided that, after notice of varying, but never very considerable length,[10] the commissioners under the Act might remove, alter, or otherwise regulate the obstruction at the cost of the rates, no compensation being payable. Such obstructions, being created after the local Act began to operate, were to be removed by the owner of the property concerned after similar notice; and, if he neglected to do so, the commissioners might cause the work to be

[1] 6 Geo. IV., c. 19. See for such a clause relating to a Turnpike Road (6 Geo. IV., c. 22). Road leading from Wigan over Amberswood Common.

[2] 6 Geo. IV., c. 32, etc.

[3] See *e.g.*, 6 Geo. IV., c. 5, Ardwick.

[4] See *e.g.*, 6 Geo. IV., c. 19, Stourbridge.

[5] See *e.g.*, 11 Geo. IV., c. 47, Manchester.

[6] Ardwick Act, *sup.*

[7] Stourbridge Act, *sup.*

[8] 52 Geo. III., c. 51, Guildford.

[9] 52 Geo. III., c. 14, Liberty of the Clink.

[10] *E.g.*, fourteen days, Stourbridge; thirty days, Ardwick.

done and recover the cost from the occupier, by distress upon his goods if necessary, the occupier being empowered to deduct such charge and any costs incurred from his next payment of rent.[1]

It is perhaps worth while to emphasise the fact that such obstructions were not merely removable, they could be altered and regulated at the discretion of the acting body. Where they were allowed to continue unaltered their use could be regulated, especially where their unregulated use might constitute a danger to the foot passenger. Thus to leave open after sunset, or to leave "defective" or without being properly secured any door, hatchway, flap window, grate, stone, plate-board, or other covering of any "cellar, coal hole, vault, office, or underground room or apartment, or of any area or sewer" was punishable by a fine of not more than five pounds,[2] though the use of such apertures after dark was permitted if sufficient light were placed to warn and prevent persons from falling into such cellars. The regulation of sign-boards and sign-irons has already been dealt with. Hardly any street Act of the late eighteenth and early nineteenth centuries was without such provisions. A rare provision is to be found in the Ardwick Act, which provided that doors or gates opening outwards, and, so projecting upon the foot pavement or street, must be altered by the owners within a period to be specified in a notice served by the commissioners, in default of which a fine of five shillings for each day of default was leviable. As is usual in these Acts, the penalty was recoverable from the occupier, who was entitled to deduct it from the next payment of rent.[3]

[1] But a much more drastic procedure was available in London after 1817 in any parish which had adopted Michael Angelo Taylor's Act (57 Geo. III., c. 29), for under it the cost of removing existing obstructions of a permanent nature was in any case to be borne by the owner of such property.

[2] 6 Geo. IV., c. 19, Stourbridge, etc.; 48 Geo. III., c. 2, Winchester; 6 Geo. IV., c. 5, Ardwick; 6 Geo. IV., c. 74, Walcot, and almost any local street Act after 1770.

[3] 6 Geo. IV., c. 5, Ardwick.

The obligation on smiths to prevent the light from their forges flashing suddenly across the otherwise dark street or road has already been referred to.[1] The window garden again was permitted provided it constituted no danger to the passer-by. In the Liberty of the Clink[2] it was forbidden to place out any garden or flower-pot on the front of any house, *except* the same were sufficiently secured from falling.[3] No Act passed without providing that proper roof gutters should be constructed for collecting the rain falling on roofs and that the water should be properly conducted to the street level in water pipes. In the later Acts it was often prescribed that such pipes should be properly connected with the common drains or sewers, but such a provision was by no means invariable; for it was a sewerless age.[4] At York it was specified that no fall pipes or spouts should be allowed to project more than five inches from the side of a house, nor any cornices or horizontal spouts for more than fourteen inches.[5] Again, although the power to decide upon the form, manner, and size of gratings and other openings or lights to cellars, whether used as coal cellars, as residences, or in any other way, was nearly always implied in the general power to remove or regulate such apertures, yet specific enactment on the subject was not uncommon. Thus it was enacted that, in Dover, the commissioners should have power to decide upon the manner and form of openings in the pavement for conveying coal or other things to cellars or for the admission of light. The commissioners

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[1] *Supra*, p. 217.

[2] The ancient jurisdiction of the Bishop of Winchester, geographically in Southwark.

[3] 52 Geo. III., c. 14. See also 6 Geo. IV., c. 5, Ardwick, etc.

[4] See 48 Geo. III., c. 86, Skinner's Estate; 50 Geo. III., c. 23, Great Yarmouth; 50 Geo. III., c. 38, Brightelmstone (Brighton); 50 Geo. III., c. 25, Bishops' Wearmouth. In this case the pipes had only to be brought within six inches of the ground. 12 Geo. III., c. 73, London Building Act; 11 Geo. IV., c. 117, Dover; 5 and 6 Wm. IV., Tormoham, Devon.

[5] 6 Geo. IV., c. 127.

could require these to be repaired, varied, or altered, as they from time to time directed, and persons not complying with the directions could be fined not more than five pounds for every week during which the disobedience continued.[1] A final example may be taken from the local Act of 1835 obtained for Tormoham in Devon. In this little place the owners of "any waste or unenclosed ground or of any ditch, brook, stream, or dangerous place near to any highway, street . . .," etc., were to fence and enclose the same in the manner required by the commissioners. If this were not done within fourteen days of notice given, the commissioners might do the work and recover the cost from the defaulting owner;[2] and, similarly, any owners of any house, wall, or building which, because it was in process of building, alteration, repair or enlargement, was dangerous to the public, were, at Aberystwyth, required to fence the same, and also to remove the fence when required. In this case, if there were default, not only might the commissioners do the work themselves and recover the cost, but the defaulter was liable to a fine of forty shillings a day during the continuance of his default.

Another matter which was almost invariably provided for in the Street Acts was the often unavoidable obstruction caused by building operations. The provisions on this point varied somewhat in form, but their effect was generally to prevent the slaking of lime, the making of mortar, the deposit of timber, bricks, stone, or other materials except within a hoarding, leave to erect which could only be obtained from the acting body or their officer. Thus, in the Westminster Act of 1762,[3] the provision took the form of a qualified prohibition. It was enacted that no enclosure for the building or repairing of houses, etc., should be made in any of the squares,

[1] 50 Geo. III., c. 26, Dover.

[2] 5 Wm. IV., c. 45.

[3] 2 Geo. III., c. 21.

streets, lanes, and other public places within the area to which the Act applied without the consent of three commissioners. Any person erecting an enclosure without such consent was to forfeit twenty shillings for every twelve hours during which the nuisance remained. The later type of clause may be illustrated from that contained in the Skinners' Estate (St. Pancras) Act of 1808.[1] Here the provision took the opposite form of a qualified permission. Nothing in the Act was to prevent the erection of any enclosure for the purpose of making mortar, or depositing bricks, or stone, or making or working up any lime, sand, or other materials for building, provided that the licence of the surveyor to the commissioners was obtained. Such a licence the surveyor was *required* to give to any person applying for it on payment of one shilling. The licence was to specify the dimensions of the hoarding and the length of time during which it might be continued. If any person erected a hoarding without permission, or not in accordance with the terms of the licence, or continued it after the licence had expired, he was liable to a fine of not more than ten shillings for each day of twenty-four hours after notice had been given by the surveyor for its removal.[2]

Just as there were clauses of the type described above, the object of which was to secure the free passage of the street and to protect the life and limb of those using it, so we find in the Acts an increasing tendency to keep the neighbourhood of the street free from *sources* of annoyance to the senses and of danger to the health. It was not enough to impound wandering swine, if the pigsty were allowed to front upon the main street; and even if the butcher from good manners and common decency, or under compulsion, refrained from throwing

[1] 48 Geo. III., c. 86.

[2] At Bishops' Wearmouth, apparently, building materials could be deposited in the street, provided room was left for a carriage to pass, there was a sufficient light kept at night time, and the material was removed within a reasonable time of its deposit. See 50 Geo. III., c. 25.

offal into the street, the neighbourhood of a slaughter-house might, nevertheless, offend or injure the ordinary citizen using the street in an ordinary way. The positive power and duty to scavenge the streets and to collect refuse, and the negative power to prevent the use of the street as a temporary place of deposit for noisome matter, were, therefore, not infrequently reinforced by clauses of the following kind. It was enacted in the Stourbridge Act already quoted that if complaint were made, by any inhabitant, of a nuisance caused by the existence of "any slaughterhouse, hog-sty, necessary house, manure heap, or other noisome or offensive building or place whatsoever in or near any of the streets," the commissioners, after investigation, might order the building complained of to be removed. If not removed by the owner within seven days of receiving notice a fine of not more than twenty shillings a day, for each day that the order continued to be disobeyed, might be exacted. In this case, however, an appeal was to lie to Quarter Sessions provided that it was made within four calendar months of the notice received from the commissioners.[1] At Salford, pigstyes were in no case to be allowed to front the streets,[2] whilst at Louth and at Tunbridge Wells an attempt was made to prevent or abate the existence of such nuisances whether they occurred in or near the public streets or not, a sane mode of procedure which superseded less comprehensive methods of protecting the public health.[3]

[1] 6 Geo. IV., c. 19. See also 6 Geo. IV., c. 196, Macclesfield, where the terms are a little wider.

[2] 11 Geo. IV., c. 8.

[3] See 6 Geo. IV., c. 129, Louth; 6 Geo. IV., c. 5, Ardwick; 5 and 6, Wm. IV., c. 72, Tunbridge Wells. Under the terms of the Tunbridge Wells Act any "necessary house or manure heap, dunghole, open sewer, cesspool, or other noisome or offensive building, place, or matter whatsoever," deemed to be a nuisance, was to be remedied or removed within five days of notice so to do, on pain of a fine of not more than forty shillings for each day of its continuance. Slaughterhouses, hogstyes, boiling-houses for offal, melting-houses for fat or tallow, scraphouses were only removable (on similar terms) when situated in or near any of

Another set of provisions intended to preserve the street space against encroachments of a permanent nature is to be found in these Acts. These were concerned not with the mere projections and excrescences, but with buildings as a whole. It was not infrequently enacted that no buildings should be erected which did not rise perpendicularly from their foundations.[1] The overhanging buildings, which, however picturesque they might be (especially to the eyes of those only accustomed to them as survivals), shut out light from the streets, and sometimes rendered the progress of a fire more easily triumphant. A building line was also adopted. Under the Dover Act the commissioners might, at their discretion, allow new buildings to be advanced beyond the existing foundations of the buildings they replaced so as to be "on a line with" adjoining buildings. Similarly on the reconstruction of any building the commissioners might order it to be set back to the "repair line of the street," though in this case satisfaction was to be made for any loss or damage occasioned to the owner by the setting back of the building. And, if any order to set back were disobeyed, or any building erected beyond the repair line, the intruding structure was to be deemed an encroachment, nuisance, and annoyance, and to be removable as such. At Hastings it was enacted that, if anyone should bring the foundation or any part of the front of a house being rebuilt, new-fronted, or altered forward beyond the line of the street or old foundation, the owner should be fined forty shillings for each week during which such

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the streets. At Louth any person keeping any "dust, dirt, dung, offal, rubbish, ashes, or other filth," so as to become a nuisance or annoyance, was to remove it within twelve hours' of notice given on pain of fine of ten shillings for each day the nuisance continued thereafter. At Ardwick the householder was specifically permitted to keep his own rubbish provided it did not become a nuisance.

[1] See *e.g.*, 30 Geo. III., c. 60, Truro; 50 Geo. III., c. 26, Dover; 50 Geo. III., c. 38, Brighton. In this case, case shop windows might project not more than ten inches.

obstruction continued, and the commissioners might remove such building and recover the cost of so doing from the owners.[1]

(*h*) *Street Naming, Street Numbering, Street Watering.*

Besides paving, watching, lighting, cleansing, and the removal and abatement of nuisances, the commissioners under the local Acts were empowered to provide some other services for the street user.[2] From the beginning of the reign of George III. it became the rule to empower the acting body created by the local Act to affix names to the streets, and to number the houses. Obviously, as towns grow in size some system of street and house identification was becoming a necessity. The question of what means should be adopted had been settled so far as the streets were concerned by the practice of centuries. Whether the names were or were not displayed, the streets had names, names which, in many cases, they had borne from the beginning of mediæval civilisation. But, as streets had multiplied and were multiplying, and as the houses in them were no longer structures with an individuality reflecting the personality of their owner or of the master-craftsman who erected them, but were beginning to be run up wholesale and all of a pattern, it was necessary that street names should be displayed, and houses made distinguishable at least by a number on the front door. So it was enacted, for instance, in the Southwark Act of 1766,[3] that the commissioners might order the houses within the streets and lanes, and within the courts, yards, alleys, passages, and places to be numbered with figures placed or painted on the doors thereof, or on such other part of the houses

[1] 1 Geo. IV., c. 12, Hastings.

[2] A good minor example of the provision of services is contained in the Southwark Act of 1766, by which the Commissioners were empowered to provide porter's blocks, as well as remove such blocks, when forming obstructions.

[3] 6 Geo. III., c. 24.

as they thought proper; and that they might also direct to be engraved, painted, or otherwise described on a conspicuous part of some house or building at or near the corner or end of each street, etc., the name by which the street was usually known. Persons destroying or disfiguring the numbers or names were to be liable to a fine of forty shillings for each offence. From the date of that Act onwards it is the rule, and not the exception, for clauses permitting or requiring the authority to name streets and number houses, and providing the machinery for rendering these conveniences permanent to be included in general street or improvement Acts.[1]

The form of the clause which deals with so simple a matter was not capable of much change, nor its substance of much expansion. The only part of the clause which varies much during the eighteenth century is, as usual, that imposing the penalty upon those damaging the names or numbers. The penalty ranged from a minimum of ten shillings to a maximum of five pounds.[2] In the earlier Acts, however, no provision was made except by implication, for the renewal of the names and numbers, though, doubtless, the wording of the clause was sufficient to allow the commissioners to renew both street names and house numbers if they thought fit. After about 1800, however, instances in which the duty of renewing house numbers is placed upon the occupiers or owners are frequent. In such cases it was enacted that, if from any reason, the numbers became defaced or obliterated, the occupiers or owners must, upon notice,

[1] See 6 Geo. III., c. 24, Southwark; 11 Geo. III., c. 54, Haydon Square, Minories; 14 Geo. III., c. 24, St. James's, Clerkenwell; 20 Geo. III., c. 48, Goswell Street; 30 Geo. III., c. , Westminster; 30 Geo. III., c. 62, Truro; 46 Geo. III., c. 42, Lichfield; 46 Geo. III., c. 43, Lewes; 46 Geo. III., c. 67, Norwich; 50 Geo. III., c. 23, Great Yarmouth; 50 Geo. III., c. 38, Brighton; 53 Geo. III., c. 83, Kidderminster; 53 Geo. III., c. 113, Bethnal Green; 1 Geo. IV., c. 12, Hastings; 11 Geo. IV., c. 8, Salford; 5 and 6 Wm. IV., c. 45, Tormoham, etc.

[2] *E.g.*, 6 Geo. III., c. 24, Southwark, 40s.; 11 Geo. III., c. 54, Haydon Gardens, 20s.; 20 Geo. III., c. 48, Goswell Street, not more than 40s., nor less than 20s.; 46 Geo. III., c. 42, Lichfield, £5; 50 Geo. III., c. 38, Brighton, 10s.

restore such numbers or pay a fine in default. The period after notice given, at which the penalty became recoverable, when it was mentioned at all, was usually three or seven days, and the amount of the fine for such neglect, again, varied from ten shillings up to not more than forty shillings.[1]

In the rapidly growing urban areas there was another service too, which, if not so urgent as in these later days of rapid locomotion, was at least desirable, namely, the watering of the streets. Clauses providing this service also become common, in fact usual, after about 1760. The Southwark Act already quoted[2] provided that the commissioners might, as often as there was occasion, and in such manner as they might direct, cause the streets and lanes within their jurisdiction to be watered, and defray the expenses so incurred out of the rates. And, for the purpose of watering the streets, they might cause wells to be dug or sunk, or pumps to be erected, and they might cause any pump already standing in the public streets to be removed or altered. Such a clause rapidly became "common form," and was, without much alteration, repeated in a great majority of the street Acts down to 1835.[3]

(*i*) *Street Improvements.*

Another power commonly inserted in the general

[1] The following are some examples of Acts under which the occupiers or owners were under an obligation to renew the numbers of their houses: 46 Geo. III., c. 42, Lichfield; 46 Geo. III., c. 67, Norwich; 50 Geo. III., c. 23, Great Yarmouth; 50 Geo. III., c. 38, Brighton; 53 Geo. III., c. 113, Bethnal Green; 1 Geo. IV., c. 12, Hastings, etc. In the Islington Act of 1824 (5 Geo. IV., c. 125), the acting body was specifically empowered to repair and renew the street names and the house numbers.

[2] 6 Geo. III., c. 24.

[3] See *e.g.*, 11 Geo. III., c. 9, Winchester; 11 Geo. III., c. 12, Goodman's Fields, Whitechapel; 14 Geo. III., c. 24, St. James's, Clerkenwell; 46 Geo. III., c. 40, Boston; 46 Geo. III., c. 43, Lewes. The Boston Act passed just eighty years after the Southwark Act quoted, repeats the Southwark clause almost word for word, though there is an added proviso that no well may be sunk or pump so constructed so as to injure existing buildings—an addition not made to the Lewes clause of the same year.

urban Acts with which we are dealing was the power to effect street improvements.[1] By the term street improvements we understand such changes in the streets and buildings as would alter the existing street plan of an area or determine the mode in which additions to that street plan should be made, the removal of considerable obstructions to the free passage of the street, or considerable alterations of its level. Many street Acts were passed which contained no such powers; and, at any date within our period it would seem that the inclusion of improvement clauses, whether of a general character or whether sanctioning only some specific improvement, though not uncommon, was hardly usual.[2]

Street improvement clauses fall into two classes: those which give the commissioners a general power to effect improvements at their discretion, and those which empower the commissioners to carry out a defined improvement (or defined improvements) only. The clause conferring the limited power to effect specific improvements are more numerous than those conferring improvement powers of a general nature.

The more general power to effect street improvements is, as a rule, found to accompany, usually, indeed,

[1] In the early nineteenth century the statutory bodies created by such Acts were generally known as Improvement Commissioners, and the Acts themselves were usually termed Improvement Acts. This had no special reference to the clauses for effecting street improvements, which the Act often, though by no means invariably, contained. It referred rather to the fact that such bodies were created for improving the general condition of the towns in respect of sanitation and amenity; that, in general, the public safety, the cleanliness and lighting and maintenance of the streets, drainage, the regulation of building, so far as it existed, in fact, almost the whole existing machinery for improving the external conditions of urban life were in the hands of such Commissioners acting under powers granted by such Acts.

[2] For instance, the Islington Act of 1824, an Act which comes late in our period, which repealed all previous statutes applying to Islington, and is an excellent and almost exhaustive specimen of the developed local Act as applied to a great metropolitan parish, though it contains a hundred and fifty-two clauses extending to seventy-five closely printed foolscap pages, contains no provision at all for effecting street improvements. Other Acts containing no improvement clauses are 43 Geo. III., c. 10, Kensington Square; 43 Geo. III., c. 11., Hans Town.

to follow the grant of some specific power. It is as if the promoters, having in mind a particular improvement obviously and urgently necessary, had bethought themselves that the need for other improvements might arise, and that it would be as well to obviate the necessity for further costly private Bill proceedings on that account. For example, a fairly early instance of the inclusion of a general improvement clause is afforded by the Southampton Act of 1770.[1] Under this Act the commissioners were specifically empowered to widen East Gate, to make a postern there, and to throw the site of East Gate, as well as that of the porch of All Saints church, into the street. The Act then proceeds: "and whereas it may happen that the said commissioners . . . may think it necessary for enlarging, widening, or rendering more commodious the said streets, squares, lanes, courts, ways, gateways, and other public passages, to take down some house or houses, sheds or other buildings . . . or to take in some piece or parcel of land or ground which they may not be enabled to effectuate by all or any of the powers . . . herein before contained . . ."; therefore the commissioners are empowered to purchase lands and buildings, and to pay for the same out of the rates, and at the same charge, to take down such buildings and lay the sites into the streets. And elaborate clauses, enabling persons under legal disability to sell land and other hereditaments to the commissioners, follow. Another case of what may be fairly termed general powers to effect street improvement is contained in the St. James's, Clerkenwell, Act of 1774.[2] In this case the commissioners are granted specific power to widen the passage from Clerkenwell Green to the church by taking down a certain tavern; and they are also empowered to remove *all* buildings and erections projecting into the footways within the parish, and are granted powers of compulsory purchase

[1] 10 Geo. III., c. 25.
[2] 14 Geo. III., c. 24.

for that purpose. Such powers as these are clearly distinguishable from the power to move particular species of obstructions with or without compensation. Not merely the projecting portions of buildings could be removed, but the buildings themselves; and not only the projecting portion of a building but the whole building might be purchased compulsorily; and though, possibly, it might not often be achieved, yet, under the power so granted, the commissioners might have straightened the whole of the irregular street lines of the district.

The later and more developed form of the clause may be exemplified from the Act of 1803, applying to King's Lynn, which not only specifically permitted and required the construction of a new street from the South Gate of the town to St. James's Street, but empowered the acting body to open up any new communications within the borough, and to alter, widen, or improve any other such communications, to make narrow parts of streets, lanes, and places, safe and commodious, and otherwise to improve the borough as directed by the Act.[1]

One of the few examples of a direct grant to a statutory body of a general power to effect street improvements at its discretion, which was not pendant to a grant of power to effect some specific improvement, is contained in the Manchester Act of 1828.[2] This Act, which revised the constitution of the Manchester Street Commissioners, provided for the creation of a special statutory improvement committee to consist of thirty of the commissioners, whose duty it was to be "to superintend and direct the widening, opening, altering, and improving the streets, squares, lanes, alleys, passages, and places . . ." of the town. Corresponding to this duty was the power "to make such improvements as they from time to time think necessary,

[1] 43 Geo. III., c. 37, King's Lynn.
[2] 9 Geo. IV., c. 117.

either by widening or altering any of the streets . . . or otherwise," and "to make the necessary purchases for such improvements."[1] There was thus the widest latitude in the character of the street improvements which the Committee could undertake, the chief limit to their powers (and, undoubtedly, it was an effective one) was in the amount of money that they might spend. The total sum, which might, in any way, be devoted to street improvements, was not to exceed the surplus which the directors of the Gas Works paid to the commissioners.[2] Moreover, though this general power to improve was not, as far as this Act was concerned, a mere appendage to some specific power, yet, in reality, it was supplementary to the specific powers granted by a local Act of 1820[3] for improving Market Street and for effecting other specific improvements in central Manchester. Evidently, too, it was intended that the

[1] It is noteworthy that, though the Commissioners were empowered by the Act to choose Committees for any of the purposes of the Act, the Improvement Committee was the only one the constitution of which is prescribed by the Act, and the appointment of which was *required*. Moreover, whilst all other committees were to hold office for one year only from the date of their appointment, arrangements were made for the perpetual existence of the Improvement Committee. Of the thirty members originally appointed, ten were to retire on the first Friday in November, 1829, and to be re-elected or replaced; ten others were to retire at the corresponding date in 1830, and similarly another ten in 1831. Those chosen at these dates in place of the retiring members or to fill the casual vacancies which had occurred were to hold office for three years. The committee, therefore, was a permanent statutory committee, one-third of whom retired annually, retiring members being eligible for re-election. The powers of the Committee were, as is shown above, quite general in character; and the authors of the Act contemplated that improvements authorised by former Acts at least would be carried out by the stable body they had brought into existence.

[2] By the Act of 1824 (5 Geo. IV., c. 133) the directors of the gas works (a statutory committee of the Street Commissioners) were to pay over the profits of the undertaking to the Street Commissioners under the original local Act of 1792, now replaced by the Act of 1828 under consideration. It is also noteworthy that if the cost of an improvement were more than £300, it could only be proceeded with provided the committee advertised the object and cost of the improvement in two Manchester papers, and obtained the consent of the Commissioners at two successive meetings, to be held at an interval of not less than twenty-eight days. (9 Geo. IV., c. 117, sec. 54.)

[3] 1 and 2 Geo. IV., c. 126.

new Improvement Committee should work with the Market Street Commissioners. The Improvement Committee could undoubtedly under its general power have undertaken such of the improvements authorised by the Market Street Act as had not been accomplished. But the Committee was also specifically empowered to recommend that the funds at their disposal should be paid over to the Market Street Commissioners, either for the purpose of carrying out the unexecuted remainder of the specifically sanctioned improvements or for liquidating debt incurred in respect of improvements already executed.[1] Further, for the purpose of carrying out its general powers the Improvement Committee had no powers of compulsory purchase. So that we may say that the separate existence of a general power to improve in this local Act was not the reality which it seemed; and that, owing to the limit of expenditure imposed and the absence of power to purchase otherwise than by agreement, the wide grant of powers was little better than an empty form of words.

Some instances of powers to effect specific improvements have already been given. In the earlier Acts the improvements to be effected were described in a clause, and the commissioners were empowered to purchase, by agreement or compulsion, such property as was needed to carry out the improvement. But this form soon gives way to the method of scheduling the property which may be acquired. Thus in the Act passed in 1774[2] to enable street improvements to be made in the parish of St. Stephen's, Bristol, the principal improvements to be effected (including a new street forty feet wide) are described in the text or in the Act; but the minor improvements authorised are described in a schedule to the Act, and all the property to be purchased for either

[1] Provided that the Highway Rate, at the cost of which such improvements were, or were to be executed, was lessened by the amount of such contribution during the year in which the grant was made or in the next following year.

[2] 14 Geo. III., c. 55.

the principal or the minor improvements is scheduled too. The practice of scheduling property may be said to become universal after 1775, and an excellent example of the developed form both of text and schedule applying to an important town is to be found in the Liverpool Act of 1826.[1] An example applying to a small place is to be found in the general street Act obtained for the parish of the Cliffe, near Lewes.[2] The schedule of property in the Liverpool Act (which resulted in the improvement of some of the principal Liverpool streets[3]) covers eighteen closely printed foolscap pages; that in the Cliffe Act covers less than one such page.[4]

In order that the statutory body might be able to purchase the property essential to the execution of the improvements designed, elaborate conveyancing clauses were necessary. The commissioners had to be authorised to agree to purchase and to pay the purchase money; and a formidable list of persons and organisations under one legal disability or another, bodies politic, corporate, or collegiate, corporations aggregate or sole, spiritual or lay, feoffees in trust, executors, administrators, husbands, guardians, committees of or for lunatics or idiots, all trustees for themselves, their successors, and for their respective *cestui que trusts* of whatever category, femes covert, seised in their own right, tenants for life, or entail, special, or general, had to be specifically authorised to agree to sell, and to convey property to the commissioners.[5] In case any incapable person had been omitted and was therefore unable to sell, or in case of neglect or refusal to agree on the part of capable persons, provisions for the independent assessment of

[1] 7 Geo. IV., c. 57.

[2] 9 Geo. IV., c. 25, "the Cliffe, otherwise Saint-Thomas-in-the-Cliffe."

[3] *Picton's Memorials*, I., 394-5.

[4] Nevertheless, the local Street Act for this country place consists of 110 clauses occupying forty-five foolscap pages.

[5] See *e.g.*, 43 Geo. III., c. 37, or any of the Acts already cited.

the value of the land, and for its compulsory purchase and conveyance, had to be made. The assessment of value was almost invariably done by a jury, the device being probably imitated from the jury *ad quod damnum* which, at Quarter Sessions, assessed damages due to diversions of highways. The jury as constituted in these local Acts usually consisted of twelve indifferent men of the county selected from a panel of twenty-four summoned in the usual manner by the Sheriff of the county; and the inquiry generally took place at Quarter Sessions. Sometimes, however, this was not the case. In the Clerkenwell Act already quoted the Commissioners could issue their precept to the Sheriff requiring him to summon a jury panel of twenty-four to appear before *them* (the Commissioners) at an appointed place, and they could administer the necessary oath to the jury selected out of the panel so summoned, conduct the inquiry and give judgment for the sum awarded by the verdict of the jury.[1] In a borough like Bristol or King's Lynn or Liverpool the hearing took place at the Borough Quarter Sessions or an adjournment of those sessions; and the owners of the property sought to be purchased could, at Liverpool, elect whether the inquiry should take place before a county or a borough jury. If the owner did not exercise his option the purchasing body (in Liverpool the Corporation) could exercise it for him. At King's Lynn the option was between the Grand and the Petty Jury. As has already been indicated, the inquiry was held on oath, and the presence of witnesses might be compelled. The jury was empowered to view the property, and documentary as well as oral evidence was admissible. The verdict was binding, conclusive, and final, and was to be entered on the Sessions Record. As a rule it was enacted that if the verdict was for more than the purchasing authority had offered, the cost of the inquiry was to be borne by

[1] 14 Geo. III., c. 24.

that authority; if it were just what had been offered or any less sum then the owner who had failed to agree was to pay such costs.[1] Sometimes it was enacted that the verdict should not be binding unless the sum awarded were tendered within a limited time.[2]

The value of the property having been assessed, there remained a multitude of precautionary clauses necessarily inserted in the Act to ensure that the commissioners should avoid all the pitfalls with which the law of real property was so plentifully bestrewn. Elaborate provisions were made to ensure of the right disposal of the purchase money where the vendor was absent, or under disability, or where the property was settled. The form of conveyance to be used was inserted in the Act itself. Provision was made for vesting the property in the commissioners even if the unwilling vendor refused the purchase money. The commissioners were specifically empowered to rid the property of mortgages or other encumbrances. Dower, estates entail, and all other estates in possession, remainder, or reversion were specifically barred; and the commissioners were further empowered to compel delivery of possession. Nevertheless, the case of persons who had been barred of their rights, title, claim, etc., to the property, or part of it, were to preserve their rights to the purchase money as against those who had received that money. In the Liverpool Act compensation, in respect of goodwill, loss of trade, loss of unexpired improvements, and damage due or incident to compulsory removal was to be determined by a jury in the same manner as the value of the property itself. Usually, too, the time within which the compulsory power to purchase scheduled property could be exercised was

[1] 14 Geo. III., c. 55, Bristol; 43 Geo. III., c. 37, King's Lynn; 7 Geo. IV., c. 57, Liverpool; 9 Geo. IV., c. 25, Cliffe, etc.

[2] Three months, 14 Geo. III., c. 55, Bristol; 43 Geo. III., c. 37, King's Lynn. One month, 14 Geo. III., c. 24, Clerkenwell.

limited.[1] Finally, the statutory body was almost invariably empowered to sell surplus lands.

Such is the outline of the clauses more usually inserted in those Acts which conferred powers of street improvement. Few local peculiarities have been included in our description and some minor, as well as some of the more formal, clauses have been omitted. The state of the law, both constitutional law and the law of real property, necessitated the repetition of all the conveyancing provisions at length in every Act providing for a street improvement, whether it were in Lord Street, Liverpool, or the unnamed main street of Saint-Thomas-in-the-Cliffe (near Lewes). This supreme example of cumbrous and costly legislative methods was provided by dozens of local Acts of all kinds annually down to the date of the Land Clauses Consolidation Acts.

(*j*) *Smoke.*

It has already been noted that the clauses prohibiting the committal of particular nuisances in the streets tended to develop into clauses having a general sanitary object, and especially aiming to prevent the perpetration of nuisance, dangerous to health or destructive of amenity, wherever committed.

In this relation the clauses for preventing smoke are interesting. The smoke nuisance had existed in London at least from the time of Charles II.[2] The introduction of coal as the ordinary domestic fuel had greatly increased the volume and, doubtless, the density, of the smoke emitted from the house chimneys of the growing city. The phenomenon was novel, was noted, was received at first with protest, but soon with acquiescence. The domestic coal smoke had "come to stay." But when the use of steam in manufacture threatened to increase the urban smoke pall from a new source, and to secure

[1] Seven years in the Liverpool Act, except in the case of property necessary for making a uniform street line in certain streets; five years at Cliffe.

[2] See Evelyn's *Fumifugium*.

its existence in summer as well as winter, the opposition aroused was bound to find expression in the local Acts. Consequently, in some cases, the Acts between 1800 and 1835 occasionally contained clauses for the prevention of smoke originating in the fire boxes of steam engines. The early nineteenth century legislator, like his modern successor, left the domestic smoke problem untouched.

The first clause of the kind described is contained in the Birmingham Act of 1812. It provided that—

> "The owners or occupiers of all engines commonly called steam engines hereafter to be erected, set up, or used in the parish of Birmingham, shall use the mode or method now adopted or other equally efficacious, to consume and burn the smoke arising therefrom, so as to prevent the same occasioning any nuisance whatsoever."

The penalty for the breach of this provision was a fine of £50.

Clauses of this kind, however, were not often introduced into local Acts. There were two reasons for this. The first is one of the permanent difficulties of all legislation, the existence of powerful interests vested or only anticipatory. Wherever a nuisance is, or is likely to be, greatest, those who are interested in maintaining it or bringing it into existence are likely to be most powerful. To-day, in many manufacturing centres, if one remarks upon the smoke-laden atmosphere, the answer of *entrepreneur*, workman, or shopkeeper, is likely to be: "The more smoke the better; smoke means trade." The question whether trade necessarily means smoke, whether, indeed, smoke means a lack of economy in fuel consumption, is of less importance. Thus it occurred that in towns where the ingenuous historian would have expected smoke clauses to be inserted in the local Act, his expectation is, as a

[1] 52 Geo. III., c. 113.

rule, disappointed. Thus in the local Acts obtained for Manchester in 1821, 1824, 1832 there are no smoke clauses of any kind.[1] The Act obtained for Chorlton Row[2] in 1832 deals only with the practice of setting chimneys on fire, a practice specifically forbidden in most local Acts of the period. And the local Acts of most of the manufacturing towns, in process of becoming "great" in the early years of the nineteenth century, are without such provisions.

Obviously the smoke nuisance was of more than local dimensions. It was far more difficult to deal with, locally, than other nuisances of an equally widespread character, and there were few local peculiarities in its production to make general legislation on the subject difficult. Probably, too, the Parliament of the early nineteenth century, composed as it very largely was of the land owning class, was not indisposed to legislation which might help to preserve the amenities of rural as well as of urban life, and which would affect adversely only the interest of the manufacturing class so far as it damaged any interest at all. To allow smoke to issue in large quantities from a chimney or a fire, might be, at common law, a cause of action for a private, or a ground of prosecution for a public nuisance.[3] But common law procedure was costly, the result of an action uncertain, and the award of damages or the infliction of punishment did not necessarily secure structural alterations essential to the permanent abatement of the nuisance. In 1821, therefore, a general Act[4] was passed with the

[1] See 1 and 2 Geo. IV., c. 126; 5 Geo. IV., 133; 2 and 3 Wm., c. 14.

[2] 3 Geo. IV., c. 14.

[3] R. V. Dewsnap, 1812, 16 East., 194; 1 and 2 Geo. IV., c. 41, c. 8, preamble; Crump *v.* Lambert, 1867, L.R., 3 Eq., 409, etc.

[4] 1 and 2 Geo. IV., c. 41. Its preamble ran as follows: "Whereas great inconvenience has arisen, and a great degree of injury has been and is now sustained by His Majesty's subjects . . . from the improper construction as well as negligent use of furnaces employed in the working of engines by steam, and whereas by law every such nuisance being of a public nature is abateable as such by indictment; but the expense attending the prosecution thereof has deterred parties suffering thereby

object of facilitating the procedure at common law, and rendering the results of such procedure more effectual. No new offence was created, but the costs of a successful prosecution for a smoke nuisance originating from the negligent use or improper construction "of furnaces employed in the working of engines by steam" were to be awarded to the prosecutor and paid by the person convicted. Further, if the Court were of opinion that the nuisance might be remedied by alteration of the construction of such a furnace, it might order such alteration before passing final sentence on the defendant. No further legislation relating to the smoke in particular occurred before 1835; and for the actual prevention of smoke the promoters of local legislation, where not indifferent to the existence of the nuisance, usually appear to have relied on this general Act.

In a few Acts, however, smoke clauses were inserted. The clauses take two forms:—

(1) They prohibit chimneys or funnels being placed in certain situations.

(2) They empower the acting body created by the local Act to make by-laws for the construction of chimneys.

Thus, to take an example of the first kind in the Liverpool Act of 1825, it was provided that smoke should not be discharged from "the front, side, or end" of any building into any street, square, or public highway, under a penalty of forty shillings.[1] At Chorlton-upon-Medlock, one of the townships of Manchester, by the Act of 1832[2] the following provision was in force: "No iron, tin, copper, or other pipe or funnel for conveying smoke or steam shall at any time be fixed, nor shall any such pipe or funnel already fixed,

from seeking the remedy given by law. . . ." The Act was furthered by that indefatigable reformer, Michael Angelo Taylor. See *H.C. Journals*, April 18th, 19th, and May 17th, 1821.

[1] 6 Geo. IV., c. 75. An Act for regulating buildings in Liverpool.

[2] 2 Wm. IV., c. 90.

be suffered to remain next to any street or on the front or side of any house or building whatsoever in the township. . . ."

Pipes fixed contrary to this provision were to be deemed a common nuisance, and, if not removed within fourteen days of notice to do so, the owner or occupier was to be fined ten shillings for every day the pipe was allowed to remain after the expiry of the period specified in the notice. Occupiers might deduct any fines paid by them on this account from their rent.[1]

The best and most comprehensive smoke provisions, however, appear to be those contained in the Macclesfield Act of 1825.[2] The acting authority in this case obtained power to deal with specific sources of the smoke nuisance, and also the power to make by-laws for the suppression of the smoke nuisance, whatever its origin. Bakers, smiths, founders, and the like were required to construct their chimneys, flues, and furnaces of such a height and in such a manner as should prevent them becoming a nuisance. "Owners and occupiers" of fire engines and steam engines were required to construct the fireplaces and chimneys thereof in such a manner as "most effectually to destroy and consume the smoke." Moreover, the commissioners under the Act were empowered "from time to time to make and ordain such rules touching the management of any . . . steam engines, or chimneys, flues and furnaces, so as to prevent the same being noxious or injurious to the neighbourhood thereof, as they shall think proper in that behalf." With regard to the production of smoke, therefore, the Macclesfield commissioners had a very wide power of regulation by by-law. The local manufacturers were delivered over into their hands. At Chorlton the powers of the commissioners were more strictly limited. All "cotton spinners, dyers, printers,

[1] See also for provisions of this type, 5 and 6 Wm. IV., c. 45, Tormoham, Devon.

[2] 6 Geo. IV., c. 196.

machine makers, velvet dressers, brewers, machine makers, smiths, founders, boiler makers, soap boilers, and other artificers and manufacturers making use of fires casting up large quantities of smoke and flame," were required to build the chimneys of their works, such heights, not exceeding thirty yards, as the commissioners should order and direct for the purpose of preventing "as much as may be" the creation of nuisances. Further, it was provided that the "owners and occupiers" of engines within the township should construct "the fire-places and chimneys thereof . . . in such manner as most effectually to destroy and consume the smoke arising therefrom." Those neglecting to construct fire-places and chimneys as directed by the clause, after at least one month's notice from the commissioners, were to be fined forty shillings for each week of delay.

This forms, in the main, the substance of the provision against the smoke nuisance enacted by means of local legislation. It was imperfect in form and context, and often did not exist in the districts where it was most needed. The fuller provision was left to a later time: and whether the later law is sufficient or adequately administered is not our present concern.[1]

[1] Many Acts contained clauses prohibiting the practice of setting chimneys on fire on pain of a fine. See *e.g.*, 52 Geo. III., c. 113, Birmingham; 3 Geo. IV., c. 141, Chorlton Row; 6 Geo. IV., c. 19, Stourbridge; 6 Geo. IV., c. 196, Macclesfield; and most local street and improvement Acts after about 1790. But the object of such clauses was rather to prevent fires than to prevent the smoke nuisance, though this was, doubtless, an object too.

Certain other smoke clauses are perhaps worth noting. By the Liverpool Harbour Act of 1825 the harbour authority was empowered to erect steam engines in the docks. It was enacted, also, that such each steam engine should be "erected and built upon the best and most approved principle of consuming its own smoke" (6 Geo. IV., c. 187). Similarly the engines employed on a quarry tramroad in the parish of Llandwrog (Carnarvon) were to be constructed to consume their own smoke (6 Geo. IV., c. 63). In the Act for the better paving and sewerage of Liverpool, and for settling the boundaries between the town of Liverpool and the townships of Kirkdale, Everton, and West Derby, it was provided that no steam engines should be erected within certain areas (chiefly within 200 yards of the boundary streets as settled in the Act) (11 Geo. IV., c. 15).

(*k*) *Sewers.*

It is a significant fact that, of all the hundreds of local Acts which passed through Parliament between 1700 and 1835, and had for their purpose the general provision of urban services, hardly one contained *in its title* any reference to sewers or drains.[1] Sewers, even in England, are an ancient institution; but until the first third of the nineteenth century had passed away they were constructed almost solely for the purpose of preserving or reclaiming land, or for disposing of the surface water of streets. Their construction and deliberate, sanctioned use for sanitary purposes is, in England, a nineteenth century innovation.[2] Indeed,

[1] 11 Geo. IV., c. 15, Liverpool, is one exception to this rule. The liability of the town to floods, owing to the contour of the neighbourhood, accounts for this. The title of this Act ran: "An Act for the better paving and sewerage of the Town of Liverpool. . . ."

[2] For a sketch of the ancient history of sewers see Clifford, *History of Private Bill Legislation*, II., 281, *et seq.* The law relating to sewerage and drainage begins with the Laws and Customs of Romney Marsh, a codification of pre-existing unwritten law and custom, made in 1225, which probably formed the model for subsequent enactments. Various Commissions for the construction of sewers and other drainage operations were issued under Royal authority in the middle ages. But these were concerned almost entirely with surface drainage, and the achievement of that purpose was also the object of the Act of 1427, regulating Commissions of Sewers, as also of the well-known Statute of Sewers of 1531 (23 Hy. VIII., c. 5), made perpetual by 3 and 4 Edw. VI., c. 8, and reinforced by 12 Car. II., c. 6. The work undertaken by the bodies of Commissioners of Sewers erected under these Acts was distinctly not of a sanitary nature. Indeed, it remained a penal offence to discharge offensive matter into the sewers until the beginning of the nineteenth century. Doubtless the London sewers constructed by the various bodies of Commissioners of Sewers, were *used* for the disposal of offensive matter, but this was a breach of the law. See "On the Main Drainage of London," by Jos. W. Bazalgette, in *Proceedings of the Institute of Civil Engineers*, vol. 24, p. 280. The eighteenth century Acts relating to the Metropolitan Commissioners of Sewers (11 Geo. III., c. 29; 33 Geo. III., c. 75; 4 Geo. IV., c. 114) are concerned with surface drainage only. The lawyer's conception both of sewers and of the functions of Commissioners of Sewers is best understood from a perusal of *The Reading of that Famous and Learned Gentleman, Robert Callis, Esq., Serjeant-at-Law upon the Statute . . . of Sewers.* The lectures of which this work (the foundation of modern sewer law) consists were delivered at Gray's Inn in 1622, and published in 1647. Callis himself was a Commissioner of Sewers in the county of Lincolnshire. The functions of Commissioners of Sewers were to prevent the encroachments of the sea, to keep clear navigable rivers and streams of all kinds, and to prevent the inundation of lands by all kinds of running water, as

one has only to peruse the clauses of eighteenth century local Acts relating to the disposal of refuse and the cleansing of privies to realise that the method of securing cleanliness by a systematic arrangement for the water carriage of obnoxious matter had not entered the heads of our great-grandfathers.[1] No Act during our period makes provision for a proper system of house drainage; almost every Act after about 1780 regulates the

well as to keep the water clear, and, especially, to regulate the use of certain artificial obstructions to the water, including bridges. The changes which occur in the significance of words are well illustrated by the definitions of "sewer" and "gutter" given by Callis. Dismissing the origin of the word he quotes with approval the definition: "The sewer is a fresh water trench compassed in, or on both sides, with a bank, and is a small or little River," and continues "and Hollingshead in his Chronicle termeth the Fleet Dike in London a Sewer; and I am of opinion, that it is a diminutive of River . . ." (p. 57). Similarly, "A gutter is of less size, and of narrower passage and current than a Sewer is; and, as I take it, a gutter is the diminutive of a Sewer; and the difference between them is, that a Sewer is a common public stream, and a gutter is a straight private running water; and the use of a Sewer is common, and of a Gutter peculiar." There can be no doubt that in the seventeenth and probably during the greater part of the eighteenth century, the conception of a sewer as an open stream remained in the lawyer's mind, and though such streams might, especially in the neighbourhood of towns, commonly be polluted, nevertheless the theoretical right of those whose interest it was to keep such streams full of "fresh water," as well as unobstructed, remained. See *Proposals of a New Model for Re-building the City of London*, by Val. Knight, 1666, where an elaborate plan for rebuilding the City contains a proposal not only for making a navigable cut to encircle the City, from the Thames near Billingsgate back again to Bridewell Dock, but the streets are each to have a "common shore," and in the greater streets it is specifically stated that this "common shore" is to run down the middle—a plan doubtless to be applied to all streets. Some attempt was made in London in early years to prevent the pollution of sewers; see *An Act for the Reformation of Abuses used in the Ward Mote Inquest*, where among the Articles of Charge of the Ward Mote Inquest we have: "59. Also if any have or use any common privies having issue into any common sewer of the City." It is worthy of note also that there exists in the British Museum (816, m.9) *An Abstract of the Forfeitures and Penalties set and imposed of offences done contrary to the Act of Parliament for Paving and Cleansing the Streets*. It is a handbill, undated, but probably issued immediately after the passing of 13 and 14 Chas. II., c. 2 (1662), and gives warning, amongst other things, as to the penalty under that Act for throwing or putting refuse into the sewers.

[1] Its advantages were not recognised fully in the mid nineteenth century, as is shown by the controversy between Chadwick and others as to proper methods of sewage disposal. In Manchester, Birmingham, and some other towns, particularly in Lancashire, the water carriage system, though victorious, is not complete to this day.

emptying of privies, both as to manner and time. It is not surprising, therefore, that clauses providing for the construction of sewers do not always occur in the general "Street Acts" of 1700-1835, and that clauses *compelling* the proper drainage of houses into the public sewers do not occur at all.[1] A brief historical sketch of the provisions of local Acts as to sewers will be the best means of making clear the nature of the provisions actually made.

The local Act of 1662[2] applying to London and Westminster, which has already been referred to in connection with paving and cleansing, contained provisions as to sewers and drains. In the preamble it is alleged that the growth of the Metropolis had led, amongst other things, to the stopping and filling of the ancient sewers, which were neither adequately cleansed nor repaired. The commissioners appointed by the Act were empowered to construct new vaults or sewers, to cut into any sewer or drain already in existence, and to alter, enlarge, amend, or scour any such vaults, sinks, or common sewers. The Act not only forbade folk to deposit refuse in the streets, but also forbade anyone to throw such refuse "into any common or public sink, vault, or water course, or common sewer." Similarly, the commissioners under the Act of 1666[3] for rebuilding London, were empowered to plan the system of "common sewers, drains, and vaults," taxing for the purpose the benefited property.[4] It appears pretty clear from all this that a more or less orderly system of drains and sewers had grown up at least in portions of

[1] The first local Act containing compulsory provision for such a purpose is stated to have been the Leeds Act, 1842, followed by the Acts for Rochdale, Southampton, and Manchester in 1844. (Clifford, ii., 307.)

[2] 14 Car. II., c. 2.

[3] 18 and 19, Car. II., c. 8.

[4] See Clifford, p. 287-8. Regulations issued by this body in 1667 and 1670 are contained (volume of proclamations, etc.) in the British Museum (816, m.9). They relate, however, to paving and not to sewer construction.

the city[1] and the adjacent central parts of the Greater London which were attaining modern dimensions; and through these drains and the common sewers (underground or open) with which they were connected, were probably constructed for taking off the rain-water from houses and for surface drainage purposes; nevertheless they were used, in spite of prohibitions to the contrary, for the disposal of liquid refuse.[2] The Commissioners for Sewers for various portions of the metropolitan area, created under the Sewers Act of 1531 and its amending Acts,[3] had power to construct sewers, no doubt primarily for surface drainage purposes; but there seems to be little doubt that these sewers were, doubtless illegally, used to some extent for the disposal of foul matter. The existence of these old statutory bodies accounts for the differences we shall find between the provisions of metropolitan and provincial Acts as to sewers and drains.

Except for these London Acts the only early local Acts in which provisions regarding sewers or drains might reasonably be expected to be found relate to

[1] For an account of the history of the City sewers see *The Surveyor's Report as to the Main Lines of Drainage within the City of London*. Ordered Oct. 4th, 1842; printed for the Hon. Commissioners of Sewers.

[2] See the evidence on this point collected by Clifford, p. 288 *et seq.*; Woolrych, *Law of Waters and of Sewers*, 1830, p. 345, *et seq.*; and authorities cited *sup.*, p. 242, *n.* 2.

[3] The Commissions were: (1) For the City. This Commission was apparently created at some date prior to the Act of 1662, for legislation referring to Commissions of Sewers in the London area was necessary in 1605; but the original body was replaced by that formed under the Act of 1662; see the Act of 1605 (3 Jac. I., c. 14), enlarging the jurisdiction of Commissioners of Sewers in London. (2) Westminster, 1605; (3) Holborn, 1686; (4) St. Katharine, Poplar and Blackwall; and (5) for Greenwich and the South side of the river. For an account of these bodies and of their powers and duties, see Woolrych, Humphry W., *The Law of Waters and of Sewers*, 1830. The law relating to sewers as it existed at that date is expounded, pp. 345-462. The section is entirely concerned with the powers, duties, and liabilities of Commissioners of Sewers, and it is significant that in the whole of the 118 pages there is no mention of a sewer as a device of sanitation. The difference in this respect between this and the later editions of the section, published separately as *The Law of Sewers*, is remarkable, and is significant of the change of attitude which took place in a single generation.

provincial towns. The Bristol Act of 1700,[1] which, besides containing clauses as to the docks accommodation and the preservation of the Avon navigation, was a general "Street" Act, contains no mention at all of sewers. The Great Yarmouth Act of 1721[2] was concerned with lighting only. The Bath Act of the same year,[3] however, does contain sewer provisions of a significant kind. The Act was for repairing the certain highways leading to the city, as well as the highways leading through the city, and for cleansing, paving, and lighting the City. The power to construct sewers which the Act contains was plainly auxiliary to the power to maintain the highways. The street authority was empowered "to cut and make drains through, and to make and erect arches of brick, timber, stone, and other materials upon any grounds of any person or persons lying contiguous to such highways or roads . . . and also to cause ditches or trenches to be made in such places and manner as the surveyor . . . shall adjudge *necessary for the better keeping the said highways or roads in good repair.*" Moreover, the owners of ditches adjoining the highways or roads within the jurisdiction of the acting body were, within seven days of notice, to cleanse and scour their ditches, otherwise the work might be done by the surveyor and the cost recovered from the owner.[4] Provisions of this kind were usually inserted in the Turnpike Trust Acts, which were, in 1721, just beginning to be a common feature of the statute book, and the clauses of Bath Act simply form a species of the great class of sewer provisions which regarded sewers as a means of carrying off the surface water of the streets, the measure in this

[1] 11 and 12 Wm. III., c. 23.

[2] 7 Geo. I., c. 11.

[3] 7 Geo. I., c. 19.

[4] This was merely declaratory of the existing general law. See Woolrych (edn. 1830), p. 388.

case being narrowed down to those streets of the town which were highways also.'

The next Street Act in historical order is the Salisbury Act of 1737.[2] There is no mention of sewers or drains in the Act, but the trustees might make orders and rules "for altering, diverting, and sinking deeper any watercourse or watercourses within the city." The Beverley Act of 1744[3] and the Colchester Act of 1750[4] contain nothing which could be construed into a reference to drainage or sewerage. The first half of the eighteenth century, therefore, does not see any real beginning made in sewer legislation by means of local Act. The second half of the eighteenth century is not much more fruitful. If we take at hazard a year fairly late in the half century, so that we may expect to find local legislation of a fairly well developed kind, we find the provisions relating to sewers still scanty and inserted almost entirely as machinery for securing the surface drainage of the streets. In the year 1786, for instance, local Street Acts were passed for Liverpool, Tewkesbury, Newcastle-upon-Tyne, Westminster, Bristol, Cheltenham, Newport (Isle of Wight), and the Liberty of the Clink (Southwark). The Westminster Acts[5] were merely amending Acts, chiefly dealing with local finance, in which no sewer clauses would in any

[1] It is worth noting at this point that a similar power to construct sewers was inserted in the General Turnpike Trust Acts of 1773, 1823, and in the General Highway Acts of 1773, 1814, 1835; and therefore, in the early nineteenth century, and indeed right up to the Public Health Act, 1848, the only way of getting sewers constructed for sanitary purposes was, in many great towns, to get the Highway Authority to act. Even when this was done (and it does *not* often appear to have been done) there was of course no power to compel house owners to connect their property with such sewers. For another and a later example of a *local* Act in which sewers were treated as a branch of highway administration, see 46 Geo. III., c. 39, Exeter, in which the construction and maintenance of sewers was, under the supervision of the City Justices, to be conducted by the Surveyors of Highways.

[2] 10 Geo. II., c. 6.

[3] 17 Geo. II., c. 13.

[4] 23 Geo. II., c. 15.

[5] 26 Geo. III., c. 102, continued the Act of 5 Geo. III., c. 13 dealing with Sunday Tolls. 26 Geo. III., c. 112, St. Margaret and St. John.

case have been expected. The Liverpool Act[1] provides that water from roofs must be brought down by pipes into "some underground gout, sewer, cistern, reservoir, *or* to the ground," an alternative which seems to exclude the supposition that Liverpool was well supplied with sewers. Another section[2] recites the deficiencies of the existing arrangements in Liverpool for surface drainage: ". . . and whereas, owing to the wrong levels of several of the streets and public passages in the said town, and to erroneous dispositions of several of the common sewers in the same town, and also for want of a power to carry off the great quantities of water which flow from the adjacent country into the said town, in certain directions so as to convey the same into the river Mersey, . . . not only are such streets and public passages rendered exceedingly incommodious and dirty, but also several of the cellars in the same streets and passages are overflowed with water." To remedy this state of things power was conferred upon the acting body not only to alter street levels at its discretion, but to change the course and disposition of the existing common sewers, to make new common sewers in the public streets and highways, and remove the same without compensating any owners of property affected. And they might convey water flowing into the town from the adjacent country, in such directions and at such levels, and above or under such private grounds or public highways as they deemed necessary, compensating those whose private property was interfered with. In this case it will be seen the statutory body obtained complete power over the existing system of sewers, and had power to construct new sewers at its discretion; but the object with which these powers were conferred was to provide for surface drainage and for that alone.[3] Similarly,

[1] 26 Geo. III., c 12.

[2] Sec. 40.

[3] As to the still sewerless condition of Liverpool for sanitary purposes in 1840, see *Report of Select Committee (Commons) on the Health of Large Towns*, especially p. 142 *et seq.*, Evidence of W. H. Duncan, M.D.

the Tewkesbury Act[1] contains sewer clauses having the same object. In this case not only the street lamps, but "all the drains and watercourses for conveying water through and from the . . . streets, lanes, etc. . . ." are vested in the commissioners; roof-water is no longer to be allowed to drip upon the unoffending passer-by, but is to be conveyed in pipes either down to the private ground of the owner or "under the foot pavement into the common channel or drain," and, finally, it is to be lawful for commissioners to cause such drains, watercourses, and sewers "as may be needful and requisite for conveying and carrying off water and soil from the said streets . . ." to be constructed not only in the streets, but in private property. Another local Act of the year in which there is reference to sewers or drains is the Act for paving, lighting, watching, and cleansing the Liberty of the Clink.[2] In this Act it was provided that, if the pavement were taken up for the purpose of repairing or cleansing any sewer or drain, notice was to be given, to the surveyor employed by the statutory body created, in order that such pavement might be properly relaid under his supervision. We shall see that this is a typical metropolitan provision. The local Acts of London never contained provision for the construction of sewers, but regulated the relations between themselves and the various commissions of sewers (created by virtue of the Tudor legislation) on the one hand, and between themselves and the owners of private drains on the other. Finally, the Newport (Isle of Wight) Act[3] vests all "pumps, wells, cesspools, bunnies, watercourses, and sewers" in the commissioners created by the Act, and also provides that the commissioners may cause "proper drains to be made for carrying the water underground." The other

[1] 26 Geo. III., c. 17; see secs. 15, 23, 45.

[2] 26 Geo. III., c. 120.

[3] 26 Geo. III., c. 119.

local Street Acts of the year, for Newcastle-upon-Tyne,[1] Bristol,[2] and Cheltenham,[3] contain no reference of any kind to sewers or drains. It will be seen, then, that the provisions of local Street Acts as to sewerage remained, in the late eighteenth century, very incomplete in character where they were inserted at all, and that Acts which purported to provide for the regulation of great towns like Newcastle and Bristol, or of residential centres like Cheltenham, could still pass through Parliament without containing any reference to sewers.

The great fact that the present area of the County of London was fairly completely under the jurisdiction of those single service bodies, the Commissioners of Sewers, renders it desirable in our consideration of sewer provisions to be found in the fully developed local Acts of the period 1800-1835, to treat the metropolitan Acts separately from the provincial Acts. The provinces were not nearly so liberally or so permanently provided with Commissions of Sewers,[4] and one consequence of this was that the fully developed provincial Acts contained powers to construct and supervise sewers and drains more commonly than did the metropolitan Acts. In the metropolis the existence of Commissions of Sewers (as well as the difficulty of treating sewerage parochially) justified the omission. In the provinces neither cause operated to relieve the promoters of local legislation from the necessity of inserting such sewer clauses as the knowledge and collective urban conscience of the time and neighbourhood demanded.

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[1] 26 Geo. III., c. 39.

[2] 26 Geo. III., c. 111, an amending Act only.

[3] 26 Geo. III., c. 116.

[4] But a Commission of Sewers for part of Somerset was issued as late as 1806. Commissions of Sewers were framed and issued by the Lord Chancellor very much like the Commissions of the Peace. See Woolrych, 352, 364. The eight bodies of Commissions in London were succeeded by that fluctuating and unfortunate body the Metropolitan Commission of Sewers.

Not infrequently London Acts, even in the first third of the nineteenth century, contained no reference of any kind to sewers.[1] Some Acts, on the other hand, empowered the statutory bodies which they created to construct a system of sewers; but they were Acts applying to suburban or outlying districts like Islington[2] and Woolwich.[3] By the Woolwich Act not only were the commissioners for its execution to cause the streets to be paved and "proper drains to be made for carrying off the water therefrom," but they were empowered to make channels, sewers, drains, and vaults "in, along, or across"[4] any of the streets, lanes, etc., of the town, and they might cause any existing sewers or drains, so situated, to be "enlarged, widened, raised, altered, removed, repaired, cleansed, or scoured." Further, the commissioners might cause "grates or openings" to be made in the sewers and drains "for the conveying and carrying off the filth and other foul waters from the houses built . . . in . . . such streets . . . into the said sewers, drains, and vaults." This was a positive encouragement to house drainage; a kind of provision which was, in 1807, and remained exceptional in the local Acts. The commissioners might also purchase land, by agreement, for the purpose of making or enlarging sewers.

It will be noticed that in the Woolwich Act there is

[1] See *e.g.*, 47 Geo. III., c. 38, St. Giles and St. George, Bloomsbury (though this is an amending Act only); 46 Geo. III., c. 77, St. George's-in-the-East; 46 Geo. III., c. 89, St. Mary, Whitechapel; 7 Geo. IV., c. 35, Camberwell New Road and the vicinity. See also for statement in general terms as to deficiencies of local Acts in this respect, *Report of Select Committee on the State of Large Towns*, 1840, p. xvii. As to sewerlessness and drainlessness of certain parts of London, particularly Bethnal Green, Whitechapel, see *ib.*, Evidence, p. 1, *et seq.* (Southwood Smith), confirmed p. 122 by Peeke (Surveyor to Tower Hamlets Commission of Sewers).

[2] 5 Geo. IV., c. 125.

[3] 47 Geo. III., sess. 2, c. 111.

[4] The absence of the word "under" seems to indicate a probability that open sewers, etc., only were contemplated by the promoters of the Act.

no reference to any body of Commissioners of Sewers. This is an exceptional feature of an Act referring to the remotest, least metropolitan, and most individually vigorous of London parishes. In the Islington Act the sewer clauses were evidently intended to enable the trustees under the Act to supplement the work of the Commissioners of Sewers. The trustees might "widen, deepen, embank, turn, alter, arch over, and cleanse, and scour all . . . watercourses, drains, and ditches" within the parish, provided they were not within the limits of the jurisdiction of the Commissioners of Sewers. Further, they might construct "new sinks, drains, ditches, or watercourses, *in lieu of old ones*," in any streets, highways, etc. Whether this means that they could replace drainage already made by the Commissioners of Sewers, or whether it applied only to the area outside the commissioners' jurisdiction, does not seem to be at all clear from the terms of the Act; and the remark applies also to the further provision empowering the Islington commissioners to make "any new sinks, drains, ditches, or watercourses in, under, or through any lands" with the consent of the occupiers. And in imitation of the provisions of the Act of Sewers, it was enacted that the cost of all or any of these operations was to be borne by the owners or occupiers of the premises which would benefit or avoid damage by the works done, or by both owners and occupiers. Besides these positive provisions there was the negative enactment that "no ditch, drain, or watercourse should be narrowed, filled up, altered, covered in or arched over by any person without the previous consent of the trustees, and then only in such manner as was expressed in that consent." The terms of this clause are so wide that there can be little doubt that they covered operations undertaken by the Commissioners of Sewers. A penalty of £5 was incurred by any person committing a breach of the clause.

Other and more typical London Acts contained no

provisions for the construction of sewers of any kind,[1] but gave the statutory bodies they created the power to control existing sewers, either those constructed by and vested in the Commissioners of Sewers, or over private sewers and drains only, or both. An Act containing typical provisions of this kind was the Shoreditch Act of 1802.[2] In this case the acting body was given a certain degree of authority over the sewers because sewers, like water pipes, were apt to be at the root of mischief to the paving. Just as, in most Street Acts, special provisions were inserted to control those whose privilege it was to lay water mains and whose duty it was to repair them, so, if paving powers were to be economically and efficiently executed, provisions for the control of sewers and of Sewer Commissioners were, in London Acts, essential.[3]

It was therefore provided that the trustees under the Shoreditch Act might, at the cost of the rates, remove and replace sewer grates at their discretion, providing nothing were done to the prejudice of the sewers. Further, they might fill, stop up, arch over, widen, or otherwise alter any sewers or drains, as they

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[1] But some of the Acts which applied, not to whole parishes, but to particular blocks of buildings or estates, gave power to construct gutters, drains, and sewers. See *e.g.*, 43 Geo. III., c. 10, Kensington Square. This probably means that conveniences not considered essential for the whole of a mixed parish were desirable in a select residential neighbourhood.

[2] 42 Geo. III., c. 13.

[3] In provincial towns the difficulty was overcome by vesting such public sewers in the statutory body, for in these towns there were, as a rule, no Commissioners of Sewers, having a prior authority in point of time, as well as the prestige of social superiority. It is interesting to notice that the control of sewers first became vested in local authorities as a consequence of their responsibility for the condition of the streets, and one might profitably speculate how far this fact is responsible for the gradual absorption by most important municipal authorities of those services which require the use of the streets, the provision of water, gas, trams, and electricity. The argument that nothing which tends to divide the control of the streets should be allowed, has to my knowledge been a clinching argument with business men whose general point of view would not in all cases lead them to regard "municipal trading" with favour.

thought necessary for making and completing the paving; but the new sewer to replace any sewer so stopped up (and such a sewer they were expressly authorised to construct) or the altered sewer, was to be as serviceable as the old one, and the work was to be done under the inspection and direction of the Commissioners of Sewers,[1] to whom ten days' notice of any contemplated interference with the sewers was to be given. The supervision of the Commissioners of Sewers over the trustees was balanced by the reciprocal authority of the trustees over the Commissioners of Sewers and all other persons owning or controlling sewers or drains. *All* persons *taking up the pavement* for the purposes of making, repairing, cleansing, or otherwise dealing with sewers or drains were to give notice to the trustees' surveyor; if damage should be done to the *streets* or pavement by the bursting or overflowing of sewers, the persons occasioning it were to stand debtors to the trustees for the cost of repair; if any private *sewer*, drain, or cesspool became ruinous or choked up so as to injure the pavement or road, the occupiers of the property having the use of the sewers, etc., were to repair or amend the pavement or road, or in default, the trustees might do the work, recovering the cost from the occupier, by distress if necessary, or, if there were no occupier, then from the owner. The substance of the sewer provisions of the Act was, therefore, that, though the trustees for Shoreditch could do nothing to add to the existing system of sewers and drains, they could interfere with the existing system so far as was necessary for the completion of the paving, and they could control the actions and the inaction of the sewer authorities, owners, and beneficiaries, so far as was necessary to the maintenance of the streets and pavement in their integrity.

[1] "His Majesty's Justices and Commissioners of Sewers for Holborn and Finsbury, St. Leonard, Shoreditch, and the Liberty of Norton Folgate."

To take another London example, the Act obtained in 1807 for the extra-mural part of St. Botolph, Aldgate, and part of East Smithfield[1] apparently gave the local street commissioners considerable power over the Commissioners of Sewers and the owners of private sewers and drains without conferring any reciprocal rights upon them.

As in the case of Shoreditch, any persons taking up the pavement in order to repair sewers, drains, or water pipes were obliged to give immediate notice to the street commissioners[2] in order that the commissioners might replace the pavement at the cost of the parties disturbing it, though the street commissioners might, at their discretion, contract with the Commissioners of Sewers or the water companies to do the necessary repaving. The street commissioners might cause the course of any gutter or channel running in or through the streets to be turned or altered, and they might remove and replace grates at their discretion. But if new or additional grates to the sewers were necessary, or old ones needed to be repaired or replaced, the work was to be done by and at the cost of the Commissioners of Sewers, and the new or repaired grates were to be laid down at such distances and in such manner and form as the street commissioners' surveyor might direct, otherwise the surveyor might do the work and the cost might be recovered from the Commissioners of sewers. And though the Street Commissioners took no power to alter the sewers or drains themselves, it was enacted that if, in the opinion of the street commissioners, any sewer or drain, under the direction of the Commissioners of Sewers, and in or communicating with the streets, required to be renewed, repaired, altered, or cleansed, the Commissioners of Sewers, within five days of notice given, were to do the required work,

[1] 47 Geo. III., sess. 2, c. 38.

[2] Sec. 17. A neglect of twenty-four hours was punishable by a fine of 20s.

or, in default, the Street Commissioners might cause it to be done and recover the cost from the Commissioners of Sewers by action at law. And a similar clause applying *mutatis mutandis* to sewers and drains in private ownership and control was contained in the Act.

The powers of the St. Botolph authority were stronger in form and wider and more rigorous in substance than those contained in the Shoreditch Act. They could, apparently, order the Commissioners of Sewers to renew or repair any sewer which they considered inefficient at the cost of the Sewers' Rate, and the efficiency of the sewer was not to depend upon the fact that it did no harm to the paving, but solely upon the opinion of the commissioners. Whether much difference resulted in administration would be difficult at this time to ascertain. At any rate, the answer to the question is, fortunately, not necessary to a study which is concerned with the substance of the law and not with its administration.

It will be observed that both these Acts empowered the street authority to require private sewers and drains to be repaired or cleansed. Sometimes a clause of this kind, together with the power to alter or divert sewers, as the proper repair of the streets necessitated, formed the only provisions concerning sewers to be found in a London local Act. Such an Act is the Poplar and Blackwall Act of 1813,[1] where the power of the Street Commissioners to require the repair, alteration, cleansing or emptying of sewers and drains is expressly confined to the private sewers and drains not under the direction of the Commissioners of Sewers.

When we turn to the provincial Acts passed in the first third of the nineteenth century we find the complete omission of all reference to sewers a comparatively rare occurrence, though instances of such omission are forthcoming, for example, in the Lewes Act of 1806[2] and the

[1] 53 Geo. III., c. 84.

[2] 46 Geo. III., c. 43.

Portsea Act, 1826.[1] But though in the provincial Acts there are usually sewer provisions of some kind, the scope and character of such provisions vary very considerably. They differ from those contained in London Acts in that the power to construct sewers is almost invariably included, and because, so far as my investigation has gone, no provincial local Act avowedly regulates the relations between the acting body which administered it and any body of Commissioners of Sewers, or indeed mentions Commissioners of Sewers at all. In some Acts the bare power to construct sewers is the only power conferred. Thus, at Chester the Street Commissioners might, with the consent of the corporation in writing, open, make, or repair in the street or public places of the city, such drains, sloughs, common sewers, and reservoirs as they thought proper at the cost of the rates leviable under the Act. This power (exercisable, be it noticed, only with the consent of the Municipal Corporation) was the sole provision concerning sewers contained in the Act.[2] Similarly, in the Kidderminster Act,[3] the clause empowering the Street Commissioners to pave, light, and cleanse the streets enabled them also to cause "gutters, sinks, drains, sewers, and watercourses" to be made in, through, or under the same, as well as to open, widen, or alter any similar conveniences already existing.[4] The wording is thus much wider than that of the Chester Act, and the power to construct sewers *under* the street as well as *in* it, is noticeable. The

[1] 7 Geo. IV., c. 64, amending and supplementing 32 Geo. III., c. 103. See also 42 Geo. III., c. 90, Maidstone; 46 Geo. III., c. 82, Margate; but these are amending Acts of no very formidable dimensions.

[2] 43 Geo. III., c. 47.

[3] 53 Geo. III., c. 83.

[4] See also the Reading Act of 1826, 7 Geo. IV., c. 56. In this case the Commissioners were empowered not only to construct sewers or drains for carrying off water from the streets, but also tunnels, gutters, grates, sinks, drains, sewers, pipes, aqueducts or watercourses, in, through, over, or under streets and public places, and to cause existing conveniences of the kind to be scoured, altered, or cleansed. But these are all the powers conferred. There is no mention of connecting private drains or of securing their efficiency in any way.

powers contained in both these Acts, though not specifically limited to the surface drainage of the streets was doubtless mainly intended for that purpose; and in the Warrington Act of 1813[1] the Kidderminster clause is repeated with the specific limitation "for the purpose of conveying water from the same" (*i.e.*, from the streets). The Kidderminster Act further empowered the commissioners to make sewers and drains through private lands if necessary, the satisfaction for damage done to be assessed by the Borough Quarter Sessions in default of agreement. But this power is specifically confined to sewers and drains necessary to carry off water and soil from the streets, lanes, etc., from the town.

Some Acts contained only the most fragmentary and casual reference to the subject and gave no power of construction at all. For instance, the only provision to be found in the Lichfield Act of 1806[2] is that the connection of private drains with any public sewers except by the consent of the Street Commissioners and under their supervision was forbidden, and that drains already so connected were to be cleared, altered, and repaired as the commissioners might direct; whilst the Windsor Act[3] of the next year merely provided that, where any private drains ran into the street or into any public sewer, the commissioners could require them to be repaired or cleansed at the cost of the owners of the property served by the drains; and similarly with regard to drains which, by falling or becoming ruinous or choked, injured the pavement. Another example of anomalous and incomplete provision is to be found in the Norwich Act of 1806.[4] In this case it was provided that the Street Commissioners "might make proper cesspools, sinks, gutters, drains and watercourses for conveying the water off and from the several streets . . .

[1] 53 Geo. III., c. 118.

[2] 46 Geo. III., c. 42.

[3] 47 Geo. III., sess. 2, c. 8.

[4] 46 Geo. III., c. 67.

and the present houses and buildings[1] within the . . . city into the present public and private sewers within the city . . . ," provided that any damage occasioned by the process were made good, but the powers of the commissioners were entirely confined to the above provisions for the street drainage, and the promoters of the Act were careful to get it provided that the " present public and private sewers " which they were to use were at all times to be repaired and renewed by the persons and out of such funds as were already liable to and chargeable with those duties.

The complete provisions for sewerage and drainage which appear in the more comprehensive provincial local Acts of later date, are usually some combination of, or all the provisions which occur separately in the Acts quoted above. Thus the King's Lynn Act of 1803[2] provided that the commissioners might cause " any new bridges, tunnels, gutters, sinks, drains, sewers, or watercourses " to be made in, through, over, or under the streets and other public places for the purpose of " conveying the water from the same," and gave them powers to alter existing sewers, etc., as they thought fit. It forbade any person to connect up drains to any public sewer or drains over which the commissioners had authority without their previous consent, under a penalty of £5; and it empowered the commissioners to require private sewers already connected up to be put in proper repair and cleansed at the charge of the owners of the property to which they belonged.[3] The Bristol Act of 1806[4] gives similar powers, but, while, on the one hand, there is no specific limitation as

[1] The water intended to be taken from the houses and buildings was probably the roof water only, though the words of the Act may have admitted of a wider interpretation. Note the curious limitation to the *present* houses and buildings.

[2] 43 Geo. III., c. 37.

[3] Sewers are frequently mentioned in these Acts as " belonging " to property.

[4] 46 Geo. III., c. 26.

to the object to be served by the sewers constructed, on the other there is no specific power to construct sewers in private lands, and the penalty for connecting private drains without authority is the larger one of £20. The Uxbridge Act[1] of the same year contains the additional power (which occurs in the Woolwich Act[2]) enabling the acting body to cause sewer grates to be made for carrying off the filth, and foul and other water from the houses in or adjoining to the streets.[3] The Newport Act of 1826 exhibits the growing tendency to control private drains, and even contains a clause which might at least plausibly be regarded as prophetic of the coming of a system of compulsory house drainage. For not only could the Newport street commissioners construct sewers in the public streets for the purpose of "conveying water and refuse" from the same, cause private drains connected with the public sewer to be repaired and cleansed, and cause any private drain in or adjoining to the streets and highways and other public places to be straightened, deepened, altered, varied, or stopped at their discretion, but they might also cause *new private drains* to be made, where they deemed it necessary, "for the purpose of conveying, draining, and taking away any sink, float, or other refuse water, and preventing the same running over any streets, lanes, roads, . . . and other public places." The cost of the construction of such *private* drains was to be borne by the commissioners, who were further to pay fair compensation for any damage or disadvantage inadvertently caused to property. The construction of private drains at public expense is, perhaps, a singular phenomenon; but though, again, the object of the provision was to prevent damage to the street and offence to the street user, the

[1] 46 Geo. III., c. 60.

[2] *Sup.*, p. 251.

[3] The Woolwich and Uxbridge Acts are the only ones I have met in which power was taken in this positive form to *provide* facilities for house drainage, unless the Norwich Act (*sup.*, p. 258) be considered another example.

clause is not without significance in the history of the evolution of modern sanitary methods.

The Salford Act of 1830[1] perhaps presents to us the culmination of sewer legislation as it occurs in the local Acts between 1800-1835. The Salford authority was not without experience in local legislation,[2] and the commissioners, in their new Act, seem to have absorbed in substance and improved in form the chief sewer provisions to be found in local Acts up to the date of their own Act. Besides clauses to prevent the sewers from contamination by the washings from gas works,[3] and to provide for the construction of suitable trenches and drains for carrying away the refuse from gas works, the commissioners were, in the clause granting the general power to pave and cleanse the streets, empowered to construct such sewers, sloughs, gutters, sinks, drains, and watercourses on such levels and at such falls as might be necessary. All this was to be done, in the first instance, at the cost of the owners, and when done the street was to be declared a public highway, and, therefore, for the future, to be publicly maintained. The commissioners might further cause such common sewers, drains, vaults, culverts, watercourses, public wells, or pumps as they thought necessary to be constructed in, along, or across any of the public streets, squares, market places, highways, lanes, roads, paths, or other passages or places within the towns. Where such conveniences already existed the commissioners might cause them to be altered, enlarged, repaired, and cleansed; and they might cause gutters or openings to be made in the sewers, etc., "for the carrying

[1] 11 Geo. IV., c. 8.

[2] The Act repeals 32 Geo. III., c. 69; 53 Geo. III., c. 72; 5 Geo. IV., c. 133, so far as they relate to Salford. The Street Commissioners for Manchester and Salford had been working for some purposes under the same (joint) Acts.

[3] After 1820, such clauses are not uncommon, especially in those Acts which empowered the authority to light the streets with gas and frequently to manufacture gas for that purpose.

off and conveying the filth, foul and other waters." from the houses into the sewers, drains, and vaults. They had power to make sewers, compulsorily if necessary, through private lands; and, finally, the commissioners might turn or alter the course of *any* gutter or channel running through the streets, or cover it over or alter it at their discretion, and they might place sewer grates, or alter or replace such sewer grates.

As to private drains, there is a significant change of form. It was to be lawful for the commissioners to authorise any person to connect any new private or branch drain to the public sewers, etc., though an unauthorised connection was punishable by a fine of £5. Thus the lawfulness of the authorised connection, and not the unlawfulness of the unauthorised connection, is emphasised. All private drains, so connected, were to be repaired and cleansed under the direction of the commissioners' officer at the expense of the owner or occupier of the property to which they belonged.

The Salford Act, therefore, may be said to contain a summary of the sewer clauses as inserted in local Acts up to 1830. It exhibits their strength and their deplorable weakness. In the first place, such clauses would have enabled a tolerable system of sewerage to be constructed. The streets could have been well sewered, and if the construction of main sewers involved the use of private lands, there was compulsory power to use such lands for the purpose. Whether a system of sewage disposal could have been created under these clauses is, at least, doubtful. But the whole of the clauses, except those requiring the sewering and channelling of new streets before dedication, were permissive. The authority might make sewers, but it need not. So it might allow private houses to be drained into the sewers but it could not compel this, to us, in our day, the most elementary and vital fact of public sanitation. Thus the clauses to which those of all local Acts tended to approximate were the true reflex of

the opinion of the time. Those who framed them recognised the necessity of dealing with street surfaces; but had not yet recognised that the concentration of population rendered the haphazard sanitary methods of the Middle Ages even more deadly in the new urban era than they had been through the centuries. Before our period closed public opinion received one sharp shock; and, before the close of another generation, the public-spirited activities of some of the ablest, most courageous, and most disinterested Englishmen of their time, coupled with the sharp admonitions of disease and misery, the constant lot of the poorest, and the occasional scourge even of the richest, caused those compulsory measures of sanitation, of which drainage and sewerage were the largest and most essential part, to be undertaken in a practical and substantial English fashion.[1]

[1] The Liverpool Act, 11 Geo. IV., c. 15, also contains fairly comprehensive sewer provisions, though they are not quite as wide as those contained in the Salford Act of the same year described above. The lack of sewers and the improper disposition of existing sewers forms quite a large part of the preamble, which alleges that under the local circumstances the lack of sewers results in injury to property "and there is reason to believe that the health of the . . . inhabitants may be seriously affected." This is the only case I have met in a local Act of the period in which the preservation of health is alleged as a reason for the provision of sewers. The Act transfers the care of sewers and paving in the ancient streets of the town from the Corporation to a body of Commissioners entitled to rate the inhabitants at large.

For a case in which the connection of sewers with highways, even after 1800, is clearly maintained, see the Exeter Act of 1806, 46 Geo. III., c. 39, where the function of sewer construction and maintenance is devolved upon the Surveyor of Highways acting under the authority of the City Quarter Sessions. The City Quarter Sessions, too, had power to licence the connection of private drains to the public sewers. They could also make a sewer rate of not more than 3d. in the £.

As to the consequences of the lack of sewers in urban areas in the earlier half of the nineteenth century, see the sketch given by Clifford ii., p. 292, the Report of the Select Committee on Large Towns, 1840, p. 18, and the evidence given before the same, *e.g.*, p. 1 *seq.*, that of Southwood Smith, p. 122, that of Peeke, p. 142, Duncan (as to Liverpool); and on the whole question see *English Sanitary Reformers*, by Miss B. L. Hutchins.

Chapter VI

NON-NORMAL CLAUSES CONTAINED IN THE NORMAL LOCAL ACT

We have now completed the description of those clauses of local " street " or " improvement " Acts which may be termed normal. Nearly all such Acts, at all events most of those passed during the period covering the last decade of the eighteenth century and the first thirty years of the nineteenth century, when the system of local legislation had reached something like a developed form, would contain clauses concerning most of the functions we have already dealt with. But the normal local Act would also include provision for some function or functions in addition to those which one might expect to find in every or almost every Act. Some towns would have peculiar needs, other needs would be characteristic of a number of towns, but not of all. It is therefore necessary to add some account of those functions often dealt with in local " street " Acts, but not normal to the whole body of those Acts.

Markets.—The function of this kind, which was most commonly provided for, was the establishment and maintenance of a market. If the street authority was to have any authority over a market of any description Parliamentary powers were necessary. The body of Improvement Commissioners could neither establish nor hold a market, set aside a site for a market, erect market buildings, purchase market rights, take market tolls, nor regulate the conduct of business in a market without the specific authority of an Act of Parliament. Even a charter from the Crown would, for practical purposes, probably have needed supplementary statutory

powers; and, for many reasons, it became desirable to place the power to hold and control the market into some more adequate hands than those into which, by Royal or Manorial grant, or some ancient prescription, they had been placed. In some towns there was need for a market and none existed; in others, a transference of market rights, or additional powers of regulation were much needed. Thus, for one reason or another, we find various powers relating to markets very commonly vested in a statutory body.

Sometimes the statutory market authority was created and its powers conferred by a special and separate Act concerned with the market only. Again, the Act might be one of which the main purpose was the creation of a market authority; but advantage might be taken of the fact that such an Act was being promoted to introduce street powers, making them exercisable as secondary functions of what was, primarily, a market authority.[1] Usually, however, market powers were inserted in a general street Act, and the body of Street or Improvement Commissioners became the market authority. This body would be empowered to hold or establish

[1] The following are instances of Acts dealing with markets only :— 17 Geo. II., c. 8, Walton ; 22 Geo. II., c. 49, Fish Market, Westminster ; 23 Geo. II, c. 14, Westminster ; 28 Geo. II., c. 23, Southwark ; 30 Geo. II., c. 31, Southwark (amending the above ; see also 4 Geo. IV, c. 34) ; 31 Geo. II., c. 25, Corn Market, Westminster ; 6 Geo. IV., c. 139, Tiverton ; 7 and 8 Geo. IV., c. 46, Sheffield ; 10 Geo. IV., c. 42, Basingstoke ; 2 Wm. IV., c. 40, Upton-on-Severn ; 4 Wm. IV., c. 8, Exeter ; 9 Geo. IV., c. 41, Bristol ; 10 Geo. IV., c. 119, St. Saviour's Southwark.

In the following instances the main purpose of the Act is the establishment of a market authority, but that authority is also given other functions :—

9 Geo. III., c. 44, Taunton (street cleansing, the suppression of nuisances, and street lighting. 57 Geo. III., c. 65, authorised gas lighting and the provision of sewers. The Act of 3 Wm. IV., c. 47, added street watering ; so that this body was gradually converted into an almost normal body of Street Commissioners).

3 Geo. IV., c. 57, Bognor (the construction of certain roads and a common pound ; 6 Geo. IV., c. 135, added street cleansing and power to suppress nuisances).

5 Geo. IV., c. 51, Bilston (the erection of a town hall, and power to pave and light the market place).

3 Wm. IV., c. 62 (also amended a previous general " street " Act).

a market, either of a general[1] or some special kind, as a fish[2] or a corn market,[3] or cattle market,[4] to set out the limits of a market place,[5] or to acquire a new site for a market place,[6] to remove the market from one place to another,[7] to enlarge an existing market place,[8] to erect a market house or market buildings,[9] repair market buildings,[10] or what was very much the same thing, to build shops and let them,[11] to purchase existing market or market rights,[12] to appoint a weighing house,[13] or erect a weighing machine in the market,[14] or one, or some of all these things. But in almost every case in which the statutory body is empowered to hold a market,

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[1] 19 Geo. III., Bridgwater; 28 Geo. III. c. 65; 38 Geo. III., c. 16, Hythe; 43 Geo. III. c. 147, Doncaster; 56 Geo. III., c. 25, West Cowes; 1 and 2 Geo. IV., c. 22, Gloucester; 5 Geo. IV., c. 109, Maidstone; 6 Geo. IV., c. 131, Burslem; 47 Geo. III., c. 111, Sess. 2, Woolwich; 11 Geo. IV., c. 8, Salford; 2 Wm. IV., c. 91, Hastings; 3 Wm. IV., c. 68, Birkenhead.

[2] 7 Geo. IV., c. 7, Bridgwater.

[3] 7 Geo. IV., c. 5, Dover.

[4] 50 Geo. III., c. 206, Wisbech.

[5] 13 Geo. III., c. 34, Brighton; 35 Geo. III., c. 34, Ramsgate.

[6] 5 Wm. IV., c. 49, Monmouth.

[7] 6 Geo. III., c. 70, Bath; 11 Geo. III., c. 19, Oxford.

[8] 23 Geo. II., c. 15, Gloucester; 24 Geo. III., c. 5, Sheffield; 5 Geo. IV., c. 24, Canterbury; 6 Geo. IV., c. 20, Margate; 7 Geo. IV., c. 5, Dover; 50 Geo. III, c. 38, Brighton.

[9] 19 Geo. III., c. 31, Wells; 25 Geo. III., c. 16, Uxbridge; 25 Geo. III., c. 34, Ramsgate; 25 Geo. III., c. 95, Bridport; 26 Geo. III., c. 39, Newcastle; 26 Geo. III., c. 116, Cheltenham; 46 Geo. III., c. 117, Cheltenham; 6 Geo. IV., c. 19, Stourbridge; 7 Geo. IV., c. 120, Sunderland; 9 Geo. IV., c. 54, Birmingham; 5 Geo. IV., c. 34, Canterbury; 34 Geo. III., c. 106, Abergavenny.

[10] 55 Geo. III., c. 22, Preston.

[11] 50 Geo. III., c. 27, Sunderland; 51 Geo. III., c. 154, Barnstaple; 9 Geo. IV., c. 26, Stalybridge; 11 Geo. III., c. 19, Oxford; 11 Geo. IV., c. 8, Salford.

[12] 47 Geo. III., c. 111, sess. 2, Woolwich; 52 Geo. III., c. 113, Birmingham; 54 Geo. III., c. 106, Wolverhampton; 7 Geo. IV., c. 7, Bridgwater.

[13] 6 Geo. IV., c. 131, Burslem.

[14] 26 Geo. III., c. 17, Tewkesbury; 9 Geo. IV., c. 42, Ashton-under-Lyne.

the incidental power to regulate the market,[1] or in another and perhaps commoner form to make by-laws[2] for the conduct of the market, and to take market tolls[3] is granted also.

Fire Provisions.—Perhaps the non-normal function which, after the provision of markets, occurs most frequently in the local Acts is that of providing some means for the suppression of fire. It is noteworthy that such provisions seldom occur in London Acts. The reason for this is probably that, in London, the parish vestry, as an instrument of government, survived more vigorously than in provincial towns, and that in London the parish, acting through the vestry, whether extra legally or not, very commonly provided a fire engine.[4] Another fact to be noted in this connection is that the provision in local improvement Acts of any machinery for dealing with fire belongs almost entirely to the period of comparatively highly developed local legislation which covers the time from about 1820 onwards to the end of our period. So far as I have been able to discover no such provision occurs in any Act passed before 1800, very few cases (probably less than half a dozen[5]) occur before 1820. Between 1820 and 1835, however, the insertion of some power to provide a fire engine or other means of fire extinction is so common that it might be termed, for those years, a normal

[1] 11 and 12 Wm. III., c. 23, Bristol; 22 Geo. II., c. 20, Bristol; 24 Geo. III., c. 5, Sheffield; 36 Geo. III., c. 49, Folkestone; 46 Geo. III., c. 118, Daventry (fairs also); 54 Geo. III., c. 106, Wolverhampton; 6 Geo. IV., c. 129, Louth; 9 Geo. IV., c. 54, Birmingham; 4 Wm. IV., c. 49, Monmouth; 53 Geo. III., c. 118, Warrington; 11 Geo. IV., c. 8, Salford.

[2] 46 Geo. III., c. 21, King's Lynn; 50 Geo. III., c. 169, Southampton; 7 Geo. IV., c. 7, Bridgwater; 5 Geo. IV., c. 34, Canterbury; 6 Geo. IV., c. 131, Burslem; 6 Geo. IV., c. 196, Macclesfield; 9 Geo. IV., c. 26, Stalybridge; 9 Geo. IV., c. 42, Ashton-under-Lyne; 1 and 2 Geo. IV., c. 59, Worthing; 6 Geo. IV., c. 27, York; 3 and 4 Wm., c. 68, Birkenhead.

[3] 19 Geo. III., c. 36, Bridgwater.

[4] See Webb, *Parish and County*, p. 114*n*, 148, etc.

[5] I have found only four.

portion of the contents of the Acts we are considering. The provision made was, of course, of a rudimentary character, and usually consisted of the power to provide a fire engine or fire engines, sometimes accompanied by the specific power to build an engine house. Occasionally provision was made for the appointment and payment of firemen, and, even more formally, for the creation of a "fire police." There are cases where the construction of fire plugs is specifically sanctioned, and, in at least one instance, the statutory body is empowered to maintain a fire engine by contract.[1]

Water.—It has already been noted that the watering of the streets was a function normally inserted in every local Act once the system of local improvement Acts had got well under weigh. In order that the function might be exercised properly, the local authority was almost invariably given power to erect, maintain, or alter pumps, to dig wells, and otherwise to utilise or

[1] The following Acts gave the statutory body which administered them power to provide a fire engine :—

43 Geo. III., c. 59, Worthing; 46 Geo. III. c. 117, Cheltenham; 50 Geo. III., c. 41, Kingston-upon-Hull; 55 Geo. III., c. 22, Preston; 1 and 2 Geo. IV., c. 89, Worthing; 4 Geo. IV., c. 90, Halifax; 5 Geo. IV., c. 66, Lancaster; 5 Geo. IV., c. 68, Walsall; 5 Geo. IV., c. 95, Hulme; 6 Geo. IV., c. 4, Ardwick; 6 Geo. IV., c. 6, Stroud; 6 Geo. IV., c. 19, Stourbridge; 6 Geo. IV., c. 20, Margate; 6 Geo. IV., c. 72, Newbury; 6 Geo. IV., c. 128, Rochdale; 6 Geo. IV., c. 133, Leamington Priors; 6 Geo. IV., c. 162, Devizes; 6 Geo. IV., c. 118, Stockport; 7 Geo. IV., c. 6, Newport (Mon.); 7 Geo. IV., c. 118, Stockport; 7 Geo. IV., c. 120, Sunderland; 7 and 8 Geo. IV., c. 77, Ashton-under-Lyne; 7 and 8 Geo. IV., c. 86, Carlisle; 9 Geo. IV., c. 25, Cliffe (Sussex); 9 Geo. IV., c. 43, E. Greenwich; 10 Geo. IV., c. 39, Ryde; 10 Geo. IV., c. 73, Croydon; 10 Geo. IV., c. 108, Kington (Hereford); 11 Geo. IV., c. 8, Salford; 11 Geo. IV., c. 16, Brunswick Square (Hove); 11 Geo. IV., c. 44, Stafford; 11 Geo. IV., c. 116, Yeovil; 2 Wm. IV., c. 45, St. Leonards; 2 Wm. IV., c. 90, Chorlton-upon-Medlock; 2 Wm. IV., c. 91, Hastings; 3 and 4 Wm. IV., c. 51, Gravesend; 3 and 4 Wm. IV., c. 68, Birkenhead; 3 and 4 Wm. IV., c. 113, Maryport.

6 Geo. IV., c. 131, Burslem, gave the Commissioners under the Act power to contract for the maintenance of a fire engine. 5 Geo. IV., c. 70, Battle Bridge, St. Pancras, and 3 and 4, Wm. IV., c. 105, Herne, gave the Commissioners under the Act power to provide an engine-house. Under 5 Geo. III., c. 81, Manchester and Salford, 7 Geo. IV., c. 57, Liverpool, and 3 and 4 Wm. IV., Herne, firemen might be appointed and paid, or, to use the phrase contained in the Liverpool Act, a fire police established; whilst 43 Geo. III., c. 90, Bradford, Yorks, specifically empowered the acting body to make fire plugs.

improve existing sources of water supply. Such a clause is normal in practically all street Acts passed after 1760.[1] In some cases the clauses were, in wording, at least, if not in aim, more comprehensive; as, for instance, in the Deal and Margate Acts of 1812 and 1813 respectively,[2] in which cases the commissioners might not only dig wells, but construct reservoirs.

More important than these were the clauses empowering the authority to undertake the water supply of the town. In at least one case, that of Halifax, the origin of the local legislation of the district is to be found in the fact that a water supply was necessary to the town, but financially unprofitable to private enterprise, and we find a body created to bring water to an increasingly important manufacturing town gradually converted into an engine of local government generally.[3] In the case of Halifax, the earlier Acts are concerned with water supply only[4] and create a special body to furnish that supply. At Worcester, however, though the primary function of the body created was to supply water, paving, lighting, and certain regulative functions are also dealt with.[5] But, especially during the last years of the reign of George III. and thence to the end of our period, clauses empowering the acting body under general "improvement" Acts to undertake this important function along with the more commonly

[1] See p. 227 and references there given; 8 Geo. III., c. 62, Portsmouth; 9 Geo. III., c. 33, Rochester; 30 Geo. III., c. 77, Coventry; 6 Geo. IV., c. 129, Louth.

[2] 52 Geo. III., c. 73, Deal; 53 Geo. III., c. 82, Margate.

[3] See 2 Geo. III., c. 40, Halifax; 8 Geo. III., c. 44, Halifax; 4 Geo. IV., c. 90, Halifax, etc.

[4] See also 31 Geo. III., c. 79, Dudley.

[5] 10 Geo. III., c. 22. The preamble alleges that the proprietors of existing water works have allowed those works to fall into decay, and that therefore the city is without a proper water supply. The Commissioners under the Act are empowered to purchase the existing water works with all the privileges and appurtenances belonging thereto, and now held on a lease granted by the Corporation of the city for a term of 500 years. The Commissioners are also to pave and light the city and to remove and prevent obstructions and annoyances therein.

imposed duties of paving, lighting, cleansing, watching, and the like, are not infrequent.[1]

Town Halls and Municipal Offices.—Obviously public bodies entrusted with a very large part of the practical government of a town, though not exhibiting the dignified externals of authority, could not conduct their business without something in the nature of offices. Often they hired public buildings. Often, too, they occupied rooms in some town hall or court house, such as existed in corporate towns or unincorporate county centres. The convenience of possessing permanent buildings of their own, the necessity felt by mayors, aldermen, or magistrates of replacing or extending some existing building not infrequently led to the insertion of a clause authorising the statutory body to build "rooms for transacting business"[2] suited to the needs of a comparatively new, and not necessarily beautiful or dignified industrial centre. Or the statutory body was empowered to build a new town hall where probably none had been before,[3] or a town hall or court house in some ancient centre where modern needs had outgrown the capacity of some ancient and possibly ruinous building.[4]

Prisons.—Unfortunately, public buildings, reflecting, one may suppose, anti-civic forces, are often found in provincial towns in close proximity to the town hall or other municipal buildings. These are prisons for the lengthy or merely temporary detention of those proved,

[1] See *e.g.*, 2 Geo. III., c. 87, Whitehaven; 6 Geo. III., c. 70, Bath; 26 Geo. III., c. 12, Liverpool; 32 Geo. III., c. 104, Carmarthen; 50 Geo. III., c. 40, Pontefract; 59 Geo. III., c. 16, Maidstone; 3 Geo. IV., c. 20, Durham; 4 Geo. IV., c. 3, Darlington; 10 Geo. IV., c. 5, King's Lynn; 2 Wm. IV., c. 91, Hastings, etc.

[2] 41 Geo. III., c. 54, Sheerness.

[3] 50 Geo. III., c. 38, Brighton; 5 Geo. IV., c. 51, Bilston; 7 Geo. IV., c. 120, Sunderland; 9 Geo. IV., c. 54, Birmingham; 11 Geo. IV., c. 46, Little Bolton; 11 Geo. IV., c. 47, Manchester.

[4] 6 Geo. IV., c. 13, Derby (authorised re-building Guildhall); 6 Geo. IV., c. 72, Newbury; 10 Geo. IV., c. 33, St. Alban's (authorised sale of Town Hall, and building of a new Court House); 49 Geo. III., c. 122, Leeds (Magistrates authorised to build a Court House).

or alleged to be worthy of confinement. Town gaols[1] and lock-ups were as common in the eighteenth century as police station cells are to-day; and it is perhaps surprising that so few provisions relating to them are to be found in the local legislation of the time. There were, of course, separate Acts for the erection or rebuilding of county gaols,[2] and, in connection with the watch organisation the erection of watch houses which usually served as places of temporary confinement for those to be brought before the magistrates, has already been mentioned.[3] Sometimes the provision of a lock-up was, however, separately and specially sanctioned in the general improvement Act.[4] Provisions of a perhaps more important kind are to be found in the Margate Act of 1825, which provided for the improvements of the local prison;[5] the Cambridge Act of 1826, which empowered the borough justices to build and maintain a gaol;[6] and the Warrington Act of 1813, which provided for the building of a Bridewell.[7] At Leeds the borough justices were empowered to build both a town prison and a court house.[8]

Slaughter Houses, Public Clocks, Corn Exchange.—This by no means exhausts the list of non-normal functions to be found in the Acts. In some cases the new statutory authority is empowered to build, maintain, and

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[1] The gaol (meaning thereby an institution for the confinement of convicted prisoners) has of course now ceased to be a local institution in England.

[2] See *e.g.*, 10 Geo. III., c. 28.

[3] See p. 192 *seq.*

[4] See *e.g.*, 11 Geo. IV., c. 44, Stafford; 3 and 4 Wm. IV., c. 105, Herne (Bay).

[5] 6 Geo. IV., c. 20, Margate.

[6] 7 and 8 Geo. IV., c. 111, Cambridge.

[7] 53 Geo. III., c. 118, Warrington.

[8] 49 Geo. III., c. 122, Leeds. In corporate towns the Corporation had, of course, usually either a common law, or chartered right to build a town gaol. Legislation was desirable to reinforce such existing power, or to make it exercisable by the Borough Justices (usually the Aldermen) only.

conduct slaughter houses.[1] Not only was the building of town halls authorised, but public clocks might be provided,[2] and, as analogous to the market provisions already considered, we may mention the power to build and maintain a corn exchange contained in the Birmingham Act of 1828.[3]

Churchyards and Cemeteries.—Moreover, in many urban centres, the deaths occurring amidst the rapidly increasing population of the eighteenth century, made the provision of other areas than the ancient churchyards for the disposal of remains of the dead an urgent matter. Thus we get special cemetery Acts empowering and facilitating the provision of a new cemetery and nothing else,[4] or Acts which authorise the enlargement of existing churchyards,[5] or, in the midst of a general urban improvement Act, the function of providing for the burial of the dead is included among those to be exercised by the new street authority.[6]

Gardens.—To pass from cemeteries for the dead to gardens for the living is an abrupt transition. As a rule there is not much trace in the local street Acts of any desire to provide for the amenities of life. But, in London, as the building of fashionable residential squares pursues its westerly course across the metropolis we find the separate authority created to pave, light, cleanse, and even police such select areas, empowered also to create, protect, and "embellish" the central garden which soothed the morning outlook of the fine gentlemen and fair ladies of the times. Such

[1] *E.g.*, 26 Geo. III., c. 12 Liverpool; 29 Geo. III., c. 79, Swansea; 50 Geo. III., c. 169, Southampton; 1 and 2, Geo. IV., c. 121, Cheltenham, etc. In the Wisbech Act (50 Geo. III., c. 206), the authority is empowered to take down the existing shambles, and the Bermondsey Act (4 and 5 Wm. IV., c. 95), provided for the regulation of existing private slaughter-houses by the statutory body.

[2] 11 Geo. IV., c. 8, Salford; 2 Wm. IV., c. 9, Chorlton-on-Medlock.

[3] 9 Geo. IV., c. 54.

[4] See 7 Geo. IV., Liverpool.

[5] 47 Geo. III., c. 15, Birmingham.

[6] 28 Geo. III., c. 41, Richmond.

provisions are to be found in the Acts obtained for St. James's Square,[1] Lincoln's Inn Fields,[2] Red Lion Square,[3] Portman Square,[4] where power was taken in a second Act to exclude the vulgar by seizing unlawful keys,[5] Grosvenor Square,[6] Brompton Square,[7] and the rest. Apparently the strenuous provinces either despised gardens or found the still easy access to the unspoiled country sufficient for their needs. At any rate, I have found no such provision in any provincial Act.

Bridges.—Ancient bridges were repairable either by the county or the parish, and, the provision of bridges does not figure largely in the contents of the street Acts of our period. There are some few separate bridge Acts, each creating a special body of trustees to erect some new but necessary bridge. The outstanding instance of this kind is provided by the series of Acts relating to Westminster Bridge. There was also a special bridge Act for the bridge over the river at Henley-on-Thames.[8] Sandwich[9] and Bristol[10] also furnish other instances of the special and separate use of this constitutional instrument for getting a bridge provided. Sometimes, as for instance at Weymouth, a statutory harbour body is empowered to build and maintain a bridge,[11] whilst instances of the care of bridges being undertaken by the new street authority are provided by the Windsor[12] and the Evesham[13] Acts.

[1] 2 Geo. I., c. 25.
[2] 8 Geo. II., c. 26.
[3] 10 Geo. II., c. 15.
[4] 2 Geo. III., c. 85.
[5] 4 Geo. IV., c. 4.
[6] 14 Geo. III., c. 52.
[7] 5 Geo. IV., c. 108.
[8] 21 Geo. III., c. 33.
[9] 28 Geo. II., c. 55.
[10] 33 Geo. II., c. 12.
[11] 6 Geo. IV., c. 116.
[12] 9 Geo. I., c. 15.
[13] 5 Geo. IV., c. 67.

Roads.—The provision for making new roads (as distinguished from town streets) or for improving old ones was, perhaps, the most commonly occurring subject of local legislation during our period. The volumes on volumes of road, or turnpike trust Acts, form a tremendous (and now dusty) monument to the legislative activity of our ancestors. But the provision of "turnpike" roads was, naturally, seldom a function to be entrusted to an urban street authority. Cases, however, though rare, do occur, as at Beverley,[1] or, where, as at Bath, the provision of a road seems to be the first, and the paving and cleansing of the town only the subsidiary reason for obtaining a local Act.

Of course, the turnpike trusts sometimes exercise general "street" functions of paving, lighting, cleansing, as well as watching where their road formed for part of its length a main avenue through the whole or part of a town. The best instances of such functions being exercised by what was primarily a special road authority are to be found in the Acts relating to the roads leading into London. It may be noted also that the Leeds Act of 1809[2] authorised the statutory street authority to "improve and widen the avenues leading to the town." But this was provision for a town improvement rather than concern for the surface of the road itself. There are, however, some cases in which the provision usual in turnpike Acts (and in the general highway Acts) for pruning trees which overhung the roads, is inserted in the street Act.[3]

Shore Preservation.—Visitors to the south coast watering-places have noticed the groyns running out from the coast into the sea to stop the quicker inroads

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[1] 13 Geo. I., c. 4.

[2] 49 Geo. III., c. 122.

[3] See *e.g.*, 6 Geo. IV., c. 70, Sudbury (Suffolk); 11 Geo. IV., c. 116, Yeovil; 2 and 3 Wm. IV., c. 106, Exeter.

of the ocean. These works were frequently authorised by the local street Acts obtained by seaside places.[1]

River Navigation and Harbour Provisions.—These were usually the subject of separate local Acts, but, sometimes, provisions relating to the repair of river walls and banks, the improvement of navigation, and the cleansing of navigable streams are to be found in general street Acts.[2]

Inclosure.—Finally we get inclosure provisions authorising the inclosure of ancient common lands, one of the very commonest (and most important) subjects of public, but more usually private local Acts, intruding into a general street Act.[3]

Power to License, Assess Fares and Rates of Carriage, to Issue Regulations and make By-laws.—The local statutory "street" authorities were not only administrative bodies, but sometimes, and to a limited extent, they were subordinate legislative authorities also. Clauses empowering them to make rules, orders, regulations, or by-laws for the execution of the powers entrusted to them, provided that such regulations did not conflict with the general law of the land or the terms of their particular statute, were not infrequently found in Acts early in the reign of George III., and, before the close of that reign, they had become almost common enough to be termed normal. Such powers were either particular or general—that is to say, the statutory body was empowered either to make regulations or by-laws with regard to some particular functions, or for general good government, so far as it fell within the scope of their Act.

The particular matters concerning which the authorities could make regulations or by-laws were

[1] *E.g.*, 13 Geo. III., c. 34, Brighton; 50 Geo. III., c. 38, Brighton (and subsequent Brighton Acts); 1 and 2 Geo. IV., c. 59, Worthing; 2 William IV., c. 45, St. Leonards; 2 Wm. IV., c. 91, Hastings.

[2] See 13 Geo. I., c. 4, Beverley; 21 Geo. III., c. 30, Colchester; 51 Geo. III., c. 43, Colchester.

[3] 33 Geo. III., c. 25, Ludlow.

most commonly connected either with the carriage of goods or of persons. And this regulative power was usually accompanied with the function of licensing the carrier, and frequently with power to fix his charges or fares. Thus at Whitby[1] and Portsmouth[2] the street commissioners had power to fix the wages of porters. At Truro, the prices to be charged by porters and carters could be determined,[3] and at Margate the commissioners could settle the rates to be charged by carters.[4] At Southampton the porters were to be licensed;[5] at Birmingham[6] and Wolverhampton[7] the statutory body was empowered to make rules for carters, and at York[8] as late as 1825 a similar body could issue by-laws regulating the work of the porters. Occasionally the local authority was authorised to control the kind of waggons or carts to be used in the streets;[9] but more frequently the proviso with regard to such vehicles was contained in the Act itself; and, either the size and character of vehicles were limited in the Act itself, or, more commonly, it was provided that no vehicle should be used in the streets which was forbidden on turnpike roads. In such cases the commissioners were empowered to erect weighing machines, and compel drivers to allow vehicles to be weighed, or other machinery was included for the enforcement of the Turnpike Act clauses.[10]

[1] 4 Geo. III., c.

[2] 10 Geo. III., c. 14.

[3] 30 Geo. III., c. 62.

[4] 27 Geo. III., c. 45.

[5] 50 Geo. III., c. 169.

[6] 13 Geo. III., c. 36.

[7] 17 Geo. III., c. 25.

[8] 6 Geo. IV., c. 127; an even later instance is 10 Geo. IV., c. 6, Duddesdon and Nechells.

[9] 2 Geo. III., c. 87, Whitehaven; 26 Geo. III., c. 39, Newcastle.

[10] See for instance, 26 Geo. III., c. 17, Tewkesbury; 27 Geo. III., c. 67, Sandwich; 36 Geo. III., c. 49, Folkestone; 28 Geo. III., c. 65, Bristol; 38 Geo. III., c. 16, Hythe; 6 Geo. IV., c. 131, Burslem; 2 Wm. IV., c. 90, Chorlton-on-Medlock.

Even more general and characteristic was the power to regulate sedan chairs, hackney coaches, and other vehicles for the conveyance of passengers. Among the places in which the local street authority could licence chairmen or regulate the use of chairs and the charges of chairmen were Bath,[1] Winchester,[2] Doncaster,[3] Yarmouth,[4] Deal,[5] Preston,[6] Burnley,[7] Plymouth,[8] and Margate;[9] the sample is sufficient to show that such powers were contained in Acts relating not only to health and pleasure resorts, but to ancient provincial centres and to the newer industrial towns. In most of the foregoing cases and in nearly all the larger towns the authority was also enabled to regulate the use of the hackney coaches by licensing drivers, fixing stands, assessing fares, and the like.[10]

A more general form of control used in the later local Acts is that of empowering the authority to make by-laws regulating the hackney coach service.[11]

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[1] 30 Geo. II., c. 65.

[2] 11 Geo. III., c. 9.

[3] 43 Geo. III., c. 147.

[4] 50 Geo. III., c. 23.

[5] 52 Geo. III., c. 70.

[6] 55 Geo. III., c. 22.

[7] 59 Geo. III., c. 34.

[8] 14 Geo. III., c. 8 (the Mayor and Justices were the Licensing Authority in this case).

[9] 49 Geo. III., c. 117.

[10] See in addition to Acts already quoted: 2 Geo. III., 68, Liverpool (Mayor and Justices to settle Hackney Coach Fares); 22 Geo. II., c. 20, Bristol; 2 Geo. III., c. 68, Liverpool (Mayor and Justices to settle Fares); 3 Geo. III., c. 48, York; 11 Geo. III., c. 8, Salford; 12 Geo. III., c. 38, Christchurch (Middlesex); 12 Geo. III., c. 68, St. Sepulchre; 32 Geo. III., c. 69, Manchester and Salford; 32 Geo. III., c. 71, Bolton; 46 Geo. III., c. 117, Cheltenham; 1 Geo. IV., c. 12, Hastings; 1 & 2 Geo. IV., c. 121, Cheltenham; 4 Geo. IV., c. 69, Worcester; 5 Geo. IV., c. 95, Hulme; 6 Geo. IV., c. 133, Leamington; 3 Wm. IV., c. 51, Gravesend; 11 Geo. IV., c. 117, Dover, etc.

[11] See 28 Geo. III., c. 65, Bristol; 41 Geo. III., c. 30, Sculcoates; 41 Geo. III., c. 39, Birmingham (also 51 Geo. III., c. 113); 45 Geo. III., c. 94, Scarborough; 50 Geo. III., c. 38, Brighton; 1 and 2 Geo. IV., c. 59, Worthing; 3 Geo. IV., c. 14, Chorlton Row; 5 Geo. IV., c. 124,

It will be noticed that the London local street authorities do not figure very largely in these samples of the towns in which street authorities could regulate the coaches plying for hire in the streets they cared for. This was because general legislation applying the whole metropolitan area was early found necessary, and the licensing and regulative power had been placed in other hands. Nevertheless, the street commissioners for the London parishes were not infrequently authorised to fix and regulate the use of hackney coach stands.[1]

With regard to the power to make by-laws concerning particular subjects, it is perhaps worthy of remark, in conclusion, that the most extensive powers are to be found in Acts obtained for the government of pleasure resorts. For instance, the Brighton Act of 1825[2] empowered the commissioners who administered it to make by-laws for regulating the markets, for licensing and regulating hackney coaches, sedan chairs, and bathing machines, and for regulating porters and pleasure boats.

More interesting, perhaps, was the power to make general by-laws for securing the due execution of the Act, which was frequently, but by no means generally, inserted in local street Acts, especially after 1800. By such a clause the commissioners were, as a rule, empowered to make rules, orders, regulations, and bye-laws, provided they were not inconsistent with their special local Act or with the general law. Such by-laws were binding on the commissioners' officers and on all other persons, and breach of them usually involved punishment by fine, the amount of which was sometimes

Leeds; 6 Geo. IV., c. 5, Ardwick; 7 Geo. IV., c. 64, Portsea; 9 Geo. IV., c. 42, Ashton-under-Lyne; 9 Geo. IV., c. 54, Birmingham; 10 Geo. IV., c. 39, Ryde; 2 Wm. IV., c. 45, St. Leonards; 2 Wm. IV., c. 90, Chorlton-on-Medlock; 2 Wm. IV., c. 91, Hastings; 2 and 3 Wm. IV., c. 106, Exeter (Mayor and Justices formed the authority, etc.).

[1] See 12 Geo. III., c. 69, St. Pancras (W. of Tottenham Court Road); 14 Geo. III., c. 24, St. James's (Clerkenwell); 16 Geo. III., c. 60, St. Leonard's (Shoreditch); 23 Geo. III., c. 31, Rotherhithe; 26 Geo. III., c. 120, Southwark; 42 Geo. III., c. 101, Commercial Road, etc.

[2] 6 Geo. IV., c. 179.

fixed by the Act and sometimes left to the discretion of the commissioners, subject to a maximum (which varied pretty considerably) stated in the clause itself. The penalties were usually recoverable summarily before one justice (and a commissioner if a justice could act in such cases), but there was appeal to the Quarter Sessions. An example of such a clause is given in full below.[1]

After 1820 the power to make general by-laws under the local Act is confined to those observable by the officers and employees of the local street authority only. Thus, for instance, the Durham Act of 1822[2] empowers the commissioners to make by-laws "for the good government and conduct of the officers and servants and other persons employed by the said commissioners." To enforce such by-laws the acting body might impose reasonable penalties not exceeding £5, and the by-laws were to be observed by the commissioners and all persons acting under their authority; but

[1] 50 Geo. III., c. 26, Dover: "And be it further enacted, that it shall be lawful for the said Commissioners from time to time, at any of the said meetings, to make such Rules, Orders, Regulations, and By-laws (not inconsistent with anything in the said Act or in this Act contained, or contrary to any Law or Statute of that part of the United Kingdom called England), as the nature of each particular circumstance shall seem to require, and from time to time to alter, vary, revoke or make void any of their Rules, Orders, Regulations, and By-laws at their discretion, and do such other things as to them shall seem necessary and expedient, for putting the said Act or this Act and every part thereof into Execution, which Rules, Orders, and Regulations so as aforesaid to be from time to time made, shall be valid and effectual to all Intents and Purposes; and all and every such Officer and Officers as aforesaid shall observe and obey the same in all things touching their respective offices, and all persons shall observe and obey the same, on pain of forfeiting any sum not exceeding forty shillings for every default in the due observance thereof: Provided always, that copies of the several Rules, Orders, Regulations, and By-laws, by this Act authorised to be made shall be fairly written out or printed, and signed by the Clerk to the said Commissioners, and that Public Notice thereof shall be given, by fixing such copies on the Market Place of Dover, Five Days at least before such Rule, Order, Regulation, or By-law shall be executed or take effect; and such Rules, Orders, Regulations, and By-laws shall be subject to appeal in the manner hereinafter mentioned." See also 2 Geo. III., c. 45, Chester; 5 Geo. III., c. 81, Manchester and Salford; 33 Geo. III., c. 89, Walcot; 46 Geo. III., c. 60, Uxbridge; 49 Geo. III., c. 79, Swansea; 50 Geo. III., c. 141, Ramsey; 55 Geo. III., c. 7, Basingstoke; 55 Geo. III., c. 43, Andover; 56 Geo. III., c. 77, Gravesend and Milton, etc.

[2] 3 Geo. IV., c. 26.

the Act contains no power to make general by-laws observable by the general public.[1] Thus the subordinate legislative power seems to have been reduced in a number of the later Acts to the mere power to make rules for officers and employees, and enforce them, imposing a fine for any breach.[2]

Such is a fairly exhaustive list of the powers which though in some instances not uncommon, nevertheless are not to be expected as a matter of course in any comprehensive street Act. The only functions which tend to become normal are those relating to the provision of a fire engine, which, during the last fifteen years of our period was perhaps a usual clause, and some provision for the regulation of sedan chairs or hackney carriages in provincial Acts relating to the larger towns. The other clauses are all abnormal, and their presence in a local Act was, as a rule, due to purely local circumstances. Though it is noteworthy that, taking normal and non-normal clauses together, precedents for most of the powers now commonly enjoyed by urban authorities can be found in the local Acts passed before 1835.

[1] See also 4 Geo. IV., c. 35, Knaresborough (maximum penalty, 40s.); 4 Geo. IV., c. 90, Halifax (maximum penalty, £5); 4 Geo. IV., c. 92, Mansfield (maximum penalty, £5); 5 Geo. IV., c. 23, Keighley (maximum penalty, £5).

[2] One may hazard a guess that the disappearance of powers to make general by-laws for good government was due to the action of the Lord Chairman of Committees in the House of Lords.

Chapter VII

THE LOCAL POOR LAW ACTS

An impression exists, even to-day, that the English Poor Law originated with the famous statute passed in the forty-third year of Elizabeth, that this statute remained in force without substantial alteration or local modification until 1834, that, then, an equally famous amending Act was passed, resulting in Poor Law Code, profoundly changed in character and completely ubiquitous, under which an uniform and rigorous administration became universal in England and Wales. Such an impression is, of course, ill-founded in almost every particular.

We have not to deal with the growth of a Poor Law before 1601, or with the many changes in the general law relating to the poor which occurred between 1601 and 1834. Our purpose is to give some account of the manner in which the Poor Law in the eighteenth century was vitally affected by local Acts applying only to particular parishes or groups of parishes. Doubtless the chief object of these Acts was, in almost all cases, to substitute some new local authority for the overseers of the poor. The overseers were unpaid and unprofessional officers, holding office, often unwillingly, and only for a single year. They were subject to very considerable obligations, which, from lack of competence, taste, or time, they were very frequently unable to fulfil with efficiency. Consequently, before the beginning of the reign of George III. it was coming to be recognised that, quite apart from defects in the substantive portion of the Poor Law, new administrative

machinery was required.[1] In very many parishes such new machinery was provided by local legislation.

[1] As is usual with the Acts of the period we are studying, the preambles often furnish a pretty comprehensive statement of the reasons why the local Acts were promoted. The preamble of Chatham Act of 1802 (42 Geo. III., c. 56) seems to be a typical example: "Whereas the parish of Chatham is very large and populous and the Poor belonging thereto are maintained and supported at great and burthensome expense; and whereas the buildings and premises now used as a poor house and workhouse in and for the said parish are not sufficiently large for the proper accommodation and employment of such poor: and whereas the enlargement of such buildings and premises, or providing other proper buildings and premises for the general reception and employment of the said poor, and the granting proper powers for the better ascertaining and collecting the poor rates, and for the better government, regulation, and employment of such poor will tend to ease the inhabitants of the said parish, and to the more effectual relief, assistance, and accommodation of such of the said poor as by age or infirmities are rendered incapable of supporting themselves by their labour, to the better employment of the industrious and those who are able to work, to the proper correction and punishment of the idle, refractory, and profligate, and to the education of the infant poor in habits of industry and religion. . . ." It will be noticed that the allegations of the preamble (proved, of course, before Committees of both Houses of Parliament) really amounts to an assertion of the inadequacy of the then existing Poor Law in almost every respect. Without further legislation, accommodation for, employment, control, and discipline of the poor cannot be provided, nor can those capable of reform be reformed, nor children be educated, nor even (and this is one of the commonest preambulatory allegations) can the rates be assessed and collected!

Such assertions are contained in dozens of other Acts; of these we may quote one. It is the preamble to an Act typical of those obtained for certain areas, particularly in Suffolk and Shropshire. In these counties it was sought to substitute the hundred or some similar aggregation of parishes for the single parish, and to institute under the more economical administration made possible by the larger area, a profitable and well managed "House of Industry" for the little parochial dens of idleness and iniquity, ironically termed workhouses. Thus (4 Geo. III., c. 56, 1764, Hundred of Blything): "Whereas the poor in the Hundred of Blything are very numerous, and are maintained and supported at a great expense by their respective parishes: and whereas the granting of proper powers for the better government and regulation of the poor in the said Hundred, and providing a place for their general reception will tend to the more effectual relief and assistance of such as by age, infirmities, or disease are rendered incapable of supporting themselves by their labour; to the better employment of the able and industrious, to the correction and punishment of the profligate and idle; and to the education of poor children in religion and industry; and thereby the poor instead of being wholly supported by the public may contribute to the support, assistance, and relief mutually of each other, and be of some advantage to the community to which they have hitherto been only a grievous burthen. . . ." If we substitute "reform" for the word "punishment," the preamble of this Act of 1764 still describes the professed objects, in our day, both of those who would reform, and those who would destroy the Poor Law.

The failure of the Overseer as an administrator is brought out in the preamble of an Act which was obtained in the last year of the eighteenth

The most generally adopted structural reform was to place the local administration of the Poor Law into the hands of a body of commissioners, nominated, elected, or of mixed constitution, but usually containing some elective element, to whom overseers were, as a rule, to be more or less completely subordinated. A description and analysis of the constitutions thus erected, some of which are, at least partially, in operation to this day, has already been given.[1] The object of the present section is to describe briefly the functions conferred by the local Acts upon these bodies.

In the first place the administrative body was, as a rule, empowered to provide a workhouse, and, therefore, usually to purchase land for a site (provision for compulsory purchase in default of agreement being almost universally inserted), and to contract for the erection of the building and its equipment.[2] The

century for the Wiltshire village which still nestles up to the kindly chalk downs (39 and 40 Geo. III., c. 48, Aldbourne): "Whereas the parish of Aldbourne in the County of Wilts is large and populous, and the poor thereof extremely numerous; and whereas if a workhouse were to be provided for the said parish, wherein the poor might be kept and employed, and power given to compel them to work, the rates for their relief might be rendered much less burthensome to the said parish, and the poor be better maintained and provided for than at present; and whereas there are three Overseers of the poor of the said parish chosen annually, who being generally engaged in a large way of business, the office has been frequently executed by improper deputies, whereby the money raised for the relief of the poor of the said parish has been misapplied, and the poor's rates within the said parish have increased to the great grievance of the landholders and others paying to the relief of the poor, all of which evils it is apprehended might, in great degree, be remedied if power were given to appoint a fit and proper person as an additional Overseer for the sole purpose of taking the care and management of the said poor . . . (therefore enacted, etc.). Here the main object of the Act was to substitute a paid official for the Honorary Overseers who had been in the habit of appointing unauthorised deputies. In such case the preamble was bound to refer to the constitutional change. In the other examples (which are more typical) the constitutional change is not referred to, the functional improvements mentioned being apparently taken to carry with them appropriate constitutional changes. But in almost every local Poor Law Act, other than minor amending Acts, the opening clauses provided for the erection of a new and, generally, an elective body to administer the Poor Law.

[1] See Chap. IV., p. 116 *supra*.

[2] See *e.g.*, 10 Geo. III., c. 75, St. Martin's-in-the-Fields; 23 Geo. III., c. 54, Birmingham; 29 Geo. III., c. 29, Highworth; 32 Geo. III., c. 20, Stone; 52 Geo. III., c. 37, Strood.

necessary corollary of these powers was the power to borrow money on security of the Poor's Rate and to mortgage the rate for that purpose. Sometimes the acting body was authorised to hire a workhouse,[1] and, in fact, many Acts provided for the hiring of a temporary workhouse whilst a permanent building was being provided.

If the poor were, as a rule, to be relieved in a workhouse, it was necessary to give the governing body special powers for the maintenance of good order in that workhouse. Such powers were almost universal in the Acts. The directors or governors and guardians of the poor, as the new local Poor Law authorities were usually called, were authorised to make by-laws, rules, orders or regulations, not only for the conduct of their own meetings and the control of their officials, but for the government of the poor in the workhouse.[2] Occasionally it was enacted that such by-laws or rules should be approved by the vestry;[3] but, as a rule, the directors or guardians of the poor were unrestricted, except by the general law of the land, in the exercise of this power, and the power was conferred in very comprehensive terms.[4] But, however comprehensive the terms in which this regulative authority was granted, though it frequently seems to have been wide enough

[1] 22 Geo. III., c. 56, St. Luke's.

[2] See 26 Geo. III., c. 98, Christchurch (Middlesex); 2 Geo. III., c. 68, St. Sepulchre; 23 Geo. III., c. 54, Birmingham; 25 Geo. III., c. 41, Richmond; 1 and 2 Wm. IV., c. 51, Norwich parishes, etc.

[3] 31 Geo. II., c. 45, St. Mary Magdalen (Bermondsey); 46 Geo. III., c. 89, St. Mary (Whitechapel), etc.

[4] The following is the substance of a typical clause: The Directors may make By-laws, Rules, Orders, and Regulations (*a*) for the regulation of their proceedings at their meetings; (*b*) for the good conduct and behaviour of their officers and servants; (*c*) for maintaining, governing, employing, and regulating the poor of the parish; (*d*) for the application of moneys collected and received by virtue of the Act; but no fine imposed under such by-laws may exceed £5. The by-laws must be printed, and affixed to the door of the Parish Church and of Chapels within the parish. And such by-laws may not be repealed or altered except at a special meeting, for the purpose of which ten days' notice must be given to all the Directors (45 Geo. III., c. 99, St. Pancras).

to cover any rules which a court of law would have found to be reasonable, whether they applied to the indoor, or the outdoor poor or both, to old or young, infirm or able-bodied, or any, or all of these, yet clauses providing specifically for certain disciplinary measures were usually thought necessary. Such clauses were usually concerned with the punishment or reward of the poor in the workhouse or house of industry. Sometimes they were comprehensive and vague, authorising corporal punishment and confinement in general terms, so as to confer upon the acting body of directors or guardians of the poor powers of summary punishment far in excess of those possessed by the justices of the peace. Indeed, the very purpose of some such clauses was to render it unnecessary for the Poor Law authorities to bring offenders before the justices. For instance, in the Chester Act of 1762,[1] the guardians were empowered not only to purchase or erect any buildings necessary for a workhouse, but "to assign and fix on any building, room, or apartment for a place of correction." This place of correction was for use, not ornament: "in . . . each case or occurrence whatsoever, wherein any of the poor under the care and management of the said guardians shall not work and labour and obey and perform the powers hereby given, and the rules and ordinances of the said corporation[2] . . . the guardians . . . shall have authority . . . at any court to order such poor person . . . so misbehaving to be whipped in the house of correction, and to do such task work or to inflict such confinement or other reasonable punishment on him . . . as any court of guardians shall think fit and suitable." But such comprehensive, arbitrary, and indefinite powers of punishment are only to be found in the earlier Acts and are not common even in those Acts. In the almost contemporary Acts for creating

[1] 2 Geo. III., c. 45.

[2] *I.e.*, the Corporation of the Poor, of which the Guardians were the acting body.

Houses of Industry in the eastern counties the powers of the guardians are much more restricted and specific. Punishment may only be inflicted upon those "who shall be guilty of profane cursing and swearing, or of any lewd, immoral, indecent, or disorderly behaviour," or upon any who "shall neglect or refuse to perform the work or service which he or she shall be required to do, or shall be remiss therein (such work or service being suited to his or their age, strength, and ability)." Moreover, the punishment itself is graded and more carefully defined. The offenders, if children under the age of twelve years, might be punished by "moderate correction," or by an abatement of diet or distinction in dress and diet. If the offender were above the age of twelve years then punishment might take the form either of abatement of diet, distinction in dress and diet, or of being set in the stocks to be provided for that purpose without any other diet than bread and water for not more than twelve hours. Such punishment was to be inflicted on the order of a majority of the directors and acting guardians present at an ordinary weekly meeting.[1] Undoubtedly the task of maintaining order in an eighteenth century workhouse, not designed so as to allow of much classification, and at a time when administrative experience of the kind required existed neither among members of the statutory bodies created nor their employees, was one of considerable difficulty. For among adult paupers there are to-day many queer customers. In the eighteenth century, with its lower standard of civilisation, especially amongst the "lower orders," there were probably many more. The difficulties which "punishment clauses" were designed to meet are succinctly set out in the preambulatory words of the clause occurring in the Chatham Act of 1802:[2]

[1] 5 Geo. III., c. 97, Loes and Wilford Hundreds. The Committee of Guardians constituted by the Act for such ordinary weekly meetings consisted of five persons. See also for a precisely similar clause, 4 Geo. III., c. 56, Hundred of Blything, etc.

[2] 42 Geo. III., c. 56.

"And whereas many persons maintained in public workhouses refuse to work or are guilty of profane cursing and swearing, drunkenness, or of embezzling and purloining, or other misbehaviour, and by the laws now in being no punishment can be inflicted upon them without committing them to the house of correction or common gaol, which commitments have not been found to answer the purposes thereby intended; be it therefore enacted . . . ."

The operative portion of the clause resembles that of the Suffolk Act, quoted immediately above, in that the punishable offences are specifically stated and the power to punish is, therefore, not indefinite and comprehensive, but definite and limited. The character of the punishment permitted, however, differs in a manner noteworthy because it is characteristic of the later local Poor Law Acts. Persons guilty of embezzling materials or wasting food or materials, swearing, drunkenness, immoral or indecent behaviour, or neglect or refusal to work, or remissness in working might, on the order of two or more guardians, be "punished in such workhouse either by abatement of diet, moderate correction, solitary confinement, or distinguishment[1] of diet or dress without committing such offenders to the house of correction or other prison, any law, statute, or usage to the contrary notwithstanding; but provided always that no female shall be whipt in any case whatsoever." Here it will be noticed that not only do the stocks disappear, but that corporal punishment is definitely confined to males. In other Acts corporal punishment is entirely omitted, and the punishments are confined to the commoner forms of correction which still obtain in prisons and workhouses;[2] and, as time goes on, the supervision of the contents of local Acts becomes a little stricter,

[1] A less ambiguous expression than "distinction" of dress.

[2] See *e.g.*, 45 Geo. III., c. 99. St. Pancras, where the only punishments to be inflicted were confinement for not more than forty-eight hours, and "distinction" of dress and diet; and so 39 and 40 Geo. III., c. 48, Aldbourne.

and the times a little more humanitarian we find punishment clauses entirely omitted, and a specific enactment that persons embezzling or wasting materials shall be taken before the Justices of the Peace.[1]

For the promotion of virtue mankind has always held that the punishment of vice is insufficient. The evil doer must suffer pain, but the good must taste pleasure so that the difference between the consequences of wrong and right doing may be well marked. This, at any rate, was the view of the eighteenth century legislator. Thus most of the Acts which contain special powers for the punishment of the misbehaving paupers also contain special powers for the reward of their meritorious fellows.[2] As a rule the reward for good conduct was a money payment which depended upon a profit being made upon the work done by paupers in the house.

"And to the end that all the poor in the said poor-house or workhouse may be encouraged to apply themselves to the labour or task in which they may be employed with diligence or attention; be it further enacted that out of the profits arising from the work which shall be done by such poor, such rewards shall be distributed to the industrious and skilful in proportion to the perfection of their work as to the said master or mistress shall appear reasonable."[3] Although profits

[1] 46 Geo. III., c. 44, Norfolk parishes. For other examples of Acts containing punishment clauses see 31 Geo. II., c. 45, St. Mary Magdalen (Bermondsey); 2 Geo. III., c. 58, St. James's (Westminster); 3 Geo. III., c. 40, St. Matthew (Bethnal Green); 6 Geo. III., c. 72, Richmond; 14 Geo. III., c. 28, Shoreditch; 17 Geo. III., c. 5, St. Mary (Islington), etc.

[2] See 23 Geo. III., c. 54, Birmingham; 29 Geo. III., c. 29, Highworth; 30 Geo. III., c. 80, Streatham; 32 Geo. III., c. 20, Stone; 45 Geo. III., c. 99, St. Pancras; 50 Geo. III., c. 83, Ratcliff; 53 Geo. III., c. 112, Shoreditch; 7 Geo. IV., c. 114, St. Bride, Fleet Street, etc.

[3] 5 Geo. III., c. 97, Loes and Wilford Hundred. In 4 Geo. III., c. 56 (Hundred of Blything) a proviso was added: "So as no part of such gratuities be expended in purchasing unwholesome or unnecessary liquors, the drinking of which the governor or steward and the matron . . . . are hereby strictly enjoined to prohibit." Nearly forty years later the Loes and Wilford clause is repeated in identical terms in the Chatham Act, 42 Geo. III., c. 56. For substantially the same clause see also 45 Geo. III., c. 99, St. Pancras; 1 and 2 Wm. IV., c. 67, Birmingham.

were in some special cases alleged to have been made in workhouses and houses of industry,[1] experience as well as common sense tell us that the profits on pauper labour have never been regular or considerable, and we may fairly doubt whether rewards were paid as frequently or as regularly as punishments were inflicted; though in some cases, apparently, reasonable rewards to the industrious might be given quite irrespective of the profitableness of workhouse industry.[2] We may notice in passing that, as a rule, the workhouse master or mistress was to be encouraged by the award of not more than twopence in the pound of the profits made upon the labour of the pauper.[3]

The Acts, in the very great majority of cases, contain clauses referring to the maintenance or the employment of the poor in the workhouse or outside it. It was found necessary to supplement the comprehensive but vague provisions of the statute of Elizabeth by more specific powers. The power to buy materials, to sell finished goods, and to permit specific trades to be followed by any inmates of a workhouse, or even by any pauper outside the workhouse, in spite of common law or statutory restrictions like those of the Apprenticeship Laws, was frequently granted. Thus, in one local Act it was enacted:

"... The directors shall and may ... keep and employ in any works, trades, or manufactures ... the poor in any workhouse ... and shall and may provide a convenient stock of flax, hemp, wool, cotton, thread, iron, stone, wood, leather, or other materials for the employment of the ... poor, and for that purpose may set up, use, and occupy any trade, mystery, or occupation in such house ... and may sell, vend, and dispose of such goods, wares, and merchandise as shall be ...

[1] Particularly at Shrewsbury.

[2] See *e.g.*, 39 and 40 Geo. III., c. 48, Aldbourne.

[3] *Ib.*, see also 4 Geo. III., c. 56, Hundred of Blything; 5 Geo. III., c. 97, Loes and Wilford Hundreds, etc.

made by such poor . . . any law, statute, or usage thereof to the contrary notwithstanding."[1]

In earlier Acts, and, indeed, in some of the later ones, the object of the clause was not only to secure that the paupers might be set to work at *any* suitable occupation but to evade difficulties of administration by contracting for the employment of the paupers, and frequently for their maintenance too. Thus, in one of the Acts for creating Houses of Industry in the eastern counties it was made lawful for the directors and guardians of the poor, at a general quarterly meeting, to contract with any person for employing the poor in the house. Such contractor was to be subject to the rules and regulations prescribed in the Act "for the ease and benefit of the said poor people," and to receive the profits of their labour after deducting the gratuities payable to the paupers and to the steward and matron. But no contract was to be for a longer period than one year.[2] Perhaps one of the most remarkable clauses to be found in these Acts is that contained in an Act of 1806 relating to certain Norfolk parishes.[3] It is still often asserted that the statute of 43 Elizabeth gives any unemployed person the right to work or maintenance. Be that as it may, the local Act of 1806 gave the "guardian" of each parish to which it applied the right to provide either work or maintenance or both to any unemployed person applying for the same. It was provided that when there were any poor persons able and willing to work but who could not get employment it should be lawful for the guardian of the poor of the parish, if he thought proper, on an application by or on behalf

[1] 45 Geo. III., c. 99, St. Pancras. See also clause to the same effect in 1 and 2 Wm. IV., c. 67, Birmingham; 5 Geo. IV., c. 126, Paddington, etc.; 39 and 40 Geo. III., c. 48, Aldbourne; and see 2 Geo. III., c. 68, St. Sepulchre; 23 Geo. III., c. 54, Birmingham.

[2] 5 Geo. III., c. 97, Loes and Wilford; see also 4 Geo. III., c. 55, St. Clement Danes; 6 Geo. III., c. 55, St. Andrew (Holborn), and St. George the Martyr; 22 Geo. III., c. 35, Wapping; 52 Geo. III., c. 77, Strood; 9 Geo. IV., c. 43, East Greenwich.

[3] 46 Geo. III., c. 44, Buxton, Everingham, etc.

of any such person, "to agree for the labour of such poor person or persons at any work or employment suited to his or her strength and capacity in any parish . . . near the place of his or her residence, and to maintain or cause such person or persons to be properly maintained, lodged, and provided for until such employment be procured, and during the time of such work."

The guardians were to receive the money earned by such an one and to apply it to the maintenance of the worker, and, if there was any surplus above the cost of his keep, to account for such surplus and to hand it over to the "poor person" within one month from its receipt. The privilege of work or maintenance had, however, its corresponding obligations; for, if any such person refused to work or ran away from the work found for him, on conviction before one justice of the peace he might be sent for not more than one month's hard labour. Such a clause, it is true, does not contain the principle of "the right to work" as sometimes nowadays asserted, since the guardian need not have provided the work or maintenance unless he thought proper. But the step from the statutory right in the guardian to provide work or maintenance or both, to a statutory right in the unemployed to claim either work or maintenance from a public authority, though a long one in principle, might have proved short in practice had such a clause been general. This clause was probably intended as a statutory justification for an existing practice in the neighbourhood, possibly the roundsman system, or one of the similar devices which came in as alternatives to the justices scale adopted after the famous Speenhamland "Act."

Few of these local Poor Law Acts were without some clauses concerning the care of children whilst under the control of the Poor Law authority and their disposal when they passed from under that control. The commonest clauses are those relating to apprenticeship. We may take as an example the provisions of the Chester

Act of 1762.[1] It provided that pauper children maintained by the guardians might at the age of fourteen years be apprenticed by them to any householder in England; or they might be apprenticed to any two of the guardians, as trustees for the corporation of the poor,[2] in order to be taught a trade. Clauses to such effect were very common, the usual amplifications introduced being some provisions either that the apprenticeship was to be for seven years, or that it should terminate at the age of twenty-one years.[3] Not infrequently, too, instead of being apprenticed to two of the guardians, directors, or whatever the statutory body was called, they were to be apprenticed to the whole body of guardians, etc., or to the workhouse master, steward, or other principal official. A rather abnormal provision was that contained in the Act for the Hundred of Blything, already quoted.[4] It was there enacted that boys were to remain under the government of the guardians until the age of eighteen years, and girls until they had attained sixteen, and that, at that age, they were to be discharged and be at their own disposal, or, apparently at the option of the guardians, but with the consent of two justices of the peace, they were, *at the age of eighteen or sixteen* respectively, to be apprenticed by the guardians in the same way as pauper children might be apprenticed by overseers of the poor; or, with the consent of two Justices, they might be apprenticed to the governor or steward appointed by the guardians. This is the only instance known to the present writer where apprenticeship was deferred by a statutory limit to so late an age. The common form into which the apprenticeship clause developed may be illustrated by the provisions of the Chatham Act of

[1] 2 Geo. III., c. 45.

[2] The Statutory Authority created by the Act.

[3] Frequently eighteen for girls.

[4] 4 Geo. III., c. 56, *sup.* p.

1802,[1] under which the pauper children were to remain under the "care and government" of the guardians until the age of fourteen years, at or after which age they might be apprenticed for not more than seven years, the apprenticeship to terminate in the case of boys at the age of twenty-one, and in the case of girls at eighteen or marriage. Apprentices on being bound were to be properly clothed.

But this power to dispose of pauper children of a suitable age by apprenticeship was almost invariably accompanied by a power to hire out the labour of children[2] either to do specified kinds of work or generally to perform any kind of labour. By the Chester Act[3] the guardians might, before or after children attained the age of fourteen years hire such children out to be servants in "husbandry, housewifery, or otherwise, for one whole year at least for such child's own benefit." Casual or seasonal work, however, was to be for the benefit of the guardians; for children under fourteen *and other poor* might be hired out to work in the time of hay or corn harvest *or at any other time* for the benefit of the guardians, and for such time as the guardians might appoint. By the Act for the Hundred of Blything[4] the children (apparently subject to no age limit—the wording is crude) or other poor persons might be hired out in harvest or hop-picking or other work suited to them, their wages being paid to the guardians. In the Chatham Act quoted above and the St. Pancras Act of 1805[5] it was provided, as at Chester, that children in the workhouse, whether under or above fourteen years of age, might be hired out, for one whole year at least, for the benefit of the children. In these cases, however, children apparently could not

[1] 42 Geo. III., c. 56.

[2] And, in fact, any other "poor persons."

[3] 2 Geo. III., c. 45.

[4] 4 Geo. III., c. 56. See also 5 Geo. III., c. 97, Loes and Wilford.

[5] 45 Geo. III., c. 99.

be hired out for casual or seasonal work, though in the case of St. Pancras, any other of the poor[1] within the workhouse might be hired out during the hay and corn harvest.

A power to hire out children or adult paupers and to take their wages involved powers to compel them to come back to the workhouse with their clothes and any implements lent them intact, subject to fair wear and tear. Thus, in the Chester Act, it was provided that any such paupers hired out and at the end of the term of their hire not immediately returning to the workhouse with their apparel and tools, might be brought back and punished as the guardians directed, a sufficiently indefinite power of punishment which, we may hope, was exercised, if exercised at all, with discretion. By 1802 the practice of granting such indefinite powers, especially to non-judicial persons or bodies, was not common; and, in the St. Pancras statute, after the sententious enactment that those hired out must do the stipulated work to the best of their abilities, it was merely prescribed that any paupers hired out and, on completion of their work, failing to return to the workhouse with their implements and apparel might be apprehended on the warrant of a single justice of the peace and brought back to the workhouse.

Two clauses which, if we judge by the context rather than the phraseology, sound very "advanced" for a hundred years ago, are perhaps worth noting. The first, from the Act of 1806, relating to certain Norfolk parishes,[2] specifically permitted the boarding out of pauper infants. All infant children of tender years who, "from accident or misfortune," became chargeable to any of the parishes to which the Act related might either

[1] It will be noticed that these and the similar clauses quoted gave the Guardians wide power to hire out any able-bodied paupers who might be in the workhouse, a power, it would seem, intended more especially to be exercised in harvest time or hop-picking, though not, as a rule specifically confined to those seasons.

[2] 46 Geo. III., c. 44, Buxton, Everingham, etc.

be sent to the poor house or be placed out "with some reputable person or persons" in or near the parish to which the child belonged, at a weekly allowance to be agreed upon, until the child was of age to be put to service or bound apprentice to husbandry or to some trade. The parishes in the area to which this Act related were grouped into divisions, there being a guardian for each parish and a visitor for each division. The children were to be boarded out by the guardian with the consent of the visitor. A list of the children boarded out, showing who was boarded out, by whom, and with whom, was to be kept and furnished to the visitor, whose statutory duty it was to see that all such children were "properly treated," and, if they were not, to cause them to be removed to other care. Such children were to be apprenticed at fit age. If any parent, relative, or other responsible person were able to support any such children then such children might be discharged from the workhouse or from the care above described; but no child was to be separated from its parents without their consent. Probably the clause but gave statutory sanction to an existing practice; but such a clause is as interesting as it is rare.

The second of the noteworthy clauses referred to occurs in the Birmingham Act of 1831.[1] It authorised the establishment of a *crèche* by the local Poor Law Authority which the Act set up. Such a clause is, to the best of the writer's knowledge, unique. The preamble is, perhaps, worth quotation:—

"And whereas many persons in the said town of Birmingham who receive parochial relief would be enabled to provide for their families by their industry if their children under seven years of age could be taken care of during the hours of labour, and it would greatly tend to diminish crime and the number of juvenile offenders and pauperism if such children were placed

[1] 1 and 2 Wm. IV., c. 67.

during such period in some room or place for their protection; and whereas it would be beneficial if the guardians had authority to apply for the purposes aforesaid a portion of the relief which such persons would otherwise receive for their children . . . ."

For these reasons it was enacted that the guardians might lease or rent rooms or places for the above purpose. They might admit to such rooms any children of the " poor of the parish " whose parents were willing to place them in the guardians' care during working hours. The guardians were to employ the children in such a manner as they thought fit, and they might engage a suitable person or suitable persons to take care of the children, and might pay any salary which they thought right to the person or persons so appointed.

Other matters concerning which some provisions were almost invariably inserted in local Poor Law Acts were vagrancy, and its concomitant, begging. The vagrant, before 1834, was outside the scope of the Poor Law. His apprehension and removal were matters for the constable and the justice of the peace, and the cost of dealing with vagrancy was payable out of the county rate. But it seems very commonly to have been thought desirable, when a brand new statutory Poor Law Authority was being created for a particular locality to give that authority power to apprehend vagrants,[1] beggars,[2] wandering persons,[3] wandering, begging, or deserted children,[4] and send them to the workhouse.

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[1] 6 Geo. III., c. 72, Richmond; 22 Geo. III., c. 35, Wapping; 32 Geo. III., c. 20, Stone; 46 Geo. III., c. 46, St. George's in the East; 47 Geo. III., sess. 2, c. 3, Woolwich; 6 Geo. IV., c. 175, St. Andrew, Holborn; and St. George the Martyr.

[2] 14 Geo. III., c. 29, Shoreditch; 14 Geo. III., c. 75, St. Saviour, Southwark.

[3] 50 Geo. III., c. 208.

[4] 26 Geo. III., c. 98, Christchurch (Middlesex); 26 Geo. II., c. 100, E. Greenwich; 2 Geo. III., c. 58, St. James's (Westminster); 2 Geo. III., c. 68, St. Sepulchre; 6 Geo. III., c. 69, St. Botolph (Aldgate); 17 Geo. III., c. 5, St. Mary (Islington); 50 Geo. III., c. 84, Liberty of the Rolls, etc.

It must be observed that beggars and begging or deserted children might be taken by the guardians or their officer to the workhouse though they were inhabitants of the parish in which the arrest took place; that is, the power of the guardians to take up beggars was by no means confined to the capture of *vagrant* beggars from other parishes. Indeed, the clauses were so worded as to have enabled the guardians to arrest and detain able-bodied idlers who, because of idleness, might cause themselves, or those legally dependent upon them, to become chargeable, for indefinite periods.[1] We have thus another instance of the way in which precedents for very many projects of social amelioration, especially if they take some disciplinary form, can be found in local legislation. The indefinite detention of able-bodied paupers with a view to their reform is nowadays often advocated.

But some, at least, of the clauses went further than this, giving an unlimited power of entry to houses in

[1] As a typical clause taken from one of the later and more developed Acts, we may quote that occurring in 42 Geo. III., c. 56, Chatham, by which it was lawful "for any one or more of the said Guardians . . . to cause any person who shall be found wandering or begging within the . . . parish, or who, being poor, or having no visible means of supporting himself or herself and family without labour, and being capable of labour refuseth to do any work suitable to his or her age, strength, or ability, whereby himself, herself, or family, or some part thereof is chargeable to the said parish *to be sent to the said workhouse, there to be kept and employed for so long a time as the said Guardians* or any two or more of them *shall direct*, or until he or she shall be discharged by due course of law, and in case of misbehaviour of any such person it shall be lawful for the said Guardians or any two or more of them to punish such offender in manner hereinafter mentioned, or for the said offence for which he or she was apprehended and sent to the said workhouse (in case he or she shall be a Vagrant) to cause such offended to be passed as a Vagrant to his or her place of birth or other legal settlement, if the same can be found." This is, of course, a statutory power to detain the local "work shy" at the complete discretion of two Guardians, a power very greatly in excess of the proposals, *e.g.*, of either the Majority or Minority Reports of the recent Poor Law Commission. The modern inquirer will be interested to note the implications that work was to be had by the willing. What amounted to a *refusal* to work cannot be ascertained. It is much to be doubted whether this (and similar clauses in other Acts) were ever really enforced. As no judicial proceedings were necessary, evidence of enforcement would be difficult to obtain. A prolonged investigation of old minute books of Poor Law bodies does not leave one with any recollection of evidence of such enforcement.

which destitute poor were suspected of being harboured and of compelling every one who had begged or needed poor relief to enter the workhouse. A clause occurring in the Chester Act of 1762[1] is worth quotation:—

"For the better providing for and discovering all . . . poor in the parishes" the guardians and their officers were empowered "to enter any house or other building in the said city where any such poor shall dwell or be known to lodge or be, and to examine, search, and see what of such poor persons there are come into and inhabiting or residing within any of the said parishes . . . who shall want, have begged, or shall seek relief, and ought to be relieved by any of the said several parishes . . . . ; and upon any of such poor . . . persons refusing upon such examination to come into the said house of industry . . . then by order of the said courts[2] or by . . . such means as the guardians . . . judge . . . reasonable, to remove every such poor person so refusing into the said house of industry to be there employed and maintained . . . ."

Thus the custom which obtained in many English towns in Stuart times of examining the town for "inmates" received statutory sanction in Chester, and the practice of "offering the house," which was to be the test of destitution under the Poor Law of 1834, an offer made with a view to excluding from relief all but the most utterly destitute, was anticipated by over seventy years, but with the tremendous difference that the offer was not made in the hope that it would be refused, the poor being compelled to come in even though they were prepared to remain in poverty outside.

Moreover, the guardians were to have power to cause "all rogues, beggars, vagrants, or idle or disorderly persons coming or being or wandering or begging within the said city . . . and not having any

[1] 2 Geo. III., c. 45.

[2] *I.e.*, meeting of the Guardians. Chester, like other ancient cities, contained many parishes. By this Act representatives of all the parishes were incorporated into a single Court of Guardians of the Poor.

lawful employment" to be apprehended and made to work in the house of industry. Such persons were to be subject to the same corporal or other punishment as the other poor in the house, and they might be "kept to hard labour and whipped in the place of correction belonging to the said corporation" in the way prescribed by the law relating to vagrancy on the orders of a court of guardians. They were not to be detained for less than thirty days nor for more than one year. Here we have the judicial powers of the justices with regard to vagrants transferred to the Poor Law authority, and those powers supplemented by an extensive power of detention. It was open to the Chester guardians to detain any vagrant for a year, the powers often demanded to-day for the purpose of training and curative treatment being granted, for the purposes of punishment, in a local statute of 1762. Though the idea of punishment was in the mind of the legislator it must be remembered that the "house of industry" such as that authorised by the Chester Act was intended to provide work which should be of a useful and therefore of a reformatory nature, and should, in fact, be remunerative; and the vagrant was not necessarily to be confined in that part of the house of industry which formed the guardians' "place of correction."

Such power of compelling entry to the house of industry and compulsorily detaining the entrants was by no means confined to vagrants and others mentioned above. The power of detention already referred to was at least definite and limited. With regard to other classes the power of detention was indefinite and unlimited. The clause is well worth quoting in full. The corporation of the poor were empowered "to order and compel all and every idle and disorderly persons, who, by reason of their idle and disorderly living shall neglect or refuse to maintain, or shall leave and desert their families not being afterwards able to maintain themselves, and also all other people who shall beg, seek or want relief for

the time being, and who shall belong to or ought, according to this Act, or by any law in force to be relieved and provided for by any of the said parishes . . . to come in to work, dwell, and inhabit in the said house of industry . . . and to detain, keep, maintain, or employ all such respective poor persons therein, so long as it shall not appear to the said guardians on the part of any such poor persons that any of them respectively are of ability or can otherwise be sufficiently maintained and provided for, without the provision of the said corporation; and to employ, set, and compel all such poor who shall be so received or come in to dwell and be in the said house of industry during such their abode and residence there . . . to . . . such work . . . as the said guardians shall think . . . (them) . . . . able . . . to do, for the use of the said corporation . . .; and to detain and keep all such idle and disorderly persons who shall have so deserted, neglected, or refused to maintain . . . their families, and to set each of them to work in such house of industry, during such time and until such person, by his or her work and labour there, shall have got and raised so much money above their maintenance as shall be sufficient to . . . reimburse to the said corporation the charges and expenses they shall have incurred." If those so detained did not earn sufficient to reimburse the corporation then the guardians might keep them within their (the guardians') house of correction for thirty days, and, during that period cause them to be whipped not more than three times.

It will be seen, therefore, that the Chester corporation of guardians had power to bring into the workhouse (1) all those who neglected or refused to maintain their families or who deserted them and left them chargeable to the rates, and (2) all those who begged or who sought or "wanted" relief, and to keep such persons in the workhouse until able to maintain themselves, and further, that class (2) might be detained after their *ability* to maintain themselves and their families was

established until they had repaid to the corporation by their earnings the costs incurred on their account, or, alternatively, for thirty days during which not more than three whippings might be administered. Such was the way in which the eighteenth century legislator subordinated in law, at least, the liberty of the subject to the necessity for what seemed to him salutary discipline.[1]

Few of these local Poor Law Acts left the question of rating untouched. The rating authority under the general law was, of course, the overseers of the poor (including the churchwardens *ex-officio*), the rate made being subject to the formal confirmation of the justices of the peace. But the very object of most of the Acts was to transfer the administration of the Poor Law from the unpaid, usually inefficient, and often unwilling overseers, to a statutory body, which, as has already been noted, was either elective or contained some elective element. The local Acts, therefore, very frequently transferred the power to make and levy the poor rate from the overseers to the statutory body itself. It was enacted that the governors, guardians, or directors of the poor (or whatever the statutory body created by an Act was called) should make and levy the rate for the relief of the poor.[2] In many parishes, however,

[1] A later instance of a more typical kind of such compulsory powers has already been quoted above (note p. 297). Another instance of how wide the power to compel paupers to "enter the House" very often was will suffice. Under 46 Geo. III., c. 44, Buxton and other Norfolk parishes, it was lawful for the Guardians "to send any persons . . . to the said Poor House who may be unable to support themselves through indigence, old age, sickness, infirmities, or want of employment, *or from any other cause whatsoever.*"

[2] See *e.g.*, 6 Geo. III., c. 72, Richmond; 10 Geo. III., c. 75, St. Martin's-in-the-Fields; 16 Geo. III., c. 15, St. George's-in-the-East; 22 Geo. III., c. 35, St. John (Wapping); 23 Geo. III., c. 32, St. John (Wapping); 25 Geo. III., c. 41, Richmond; 26 Geo. III., c. 114, St. John (Southwark); 30 Geo. III., c. 80, Streatham; 31 Geo. III., c. 19, Bermondsey; 42 Geo. III., c. 56, Chatham; 44 Geo. III., c. 47, St. Pancras; 45 Geo. III., c. 99, St. Pancras; 50 Geo. III., c. 83, Hamlet of Ratcliff; 52 Geo. III., c. 66, Strood; 53 Geo. III., c. 37, Mile End; 53 Geo. III., c. 84, Poplar; 54 Geo. III., c. 43, Lewisham; 56 Geo. III., c. 66, Shardlow and Wilne; 1 and 2 Wm. IV., c. 51, Norwich; 1 and 2 Wm. IV., c. 67, Birmingham.

particularly in London, the power to make the rate was placed, by law, in the hands of the vestry, the body which had, in fact, long controlled the overseer to a greater or smaller extent in the exercise of his rate-making function. In some cases this power was conferred upon vestry simply and without qualification.[1] But though the vestry had, in these cases, the formal power to make and levy the rate, its power, save where a select vestry was made the statutory Poor Law authority, was nothing more than formal. For it was the statutory Poor Law body, the directors, governors, or guardians of the poor who spent the money and determined what funds would be required, and therefore what the total amount of the rate would be. The duties of the vestry, therefore, were, in practice, if not in legal form, often purely ministerial; and, in many cases, this practical aspect of the matter was recognised in the Act itself by a proviso that, if the vestry neglected or refused to raise the amount demanded by the statutory Poor Law authority, that authority could make and levy the rate itself.[2] In provincial cases the power and duty to make and levy the rate was left with the overseers, but, in their default, the statutory body could itself make and levy the rate.[3] In one case the guardians were to be joined with the vestry in making the rate.[4]

[1] See 26 Geo. II., c. 100, E. Greenwich; 30 Geo. II., c. 42, St. Luke's; 2 Geo. III., c. 58, St. James's (Westminster); 6 Geo. III., c. 64, St. Botolph (Aldgate); 12 Geo. III., c. 68, St. Sepulchre; 15 Geo. III., c. 23 St. James's (Clerkenwell); 29 Geo. III., c. 75, St. George's (Hanover Square); 35 Geo. III., c. 61, St. Botolph (Bishopsgate); 50 Geo. III., c. 208, St. Paul's (Shadwell); 53 Geo. III., c. 113, Bethnal Green; 5 Geo. IV., c. 126, Paddington; 9 Geo. IV., c. 43, East Greenwich.

[2] See 26 Geo. II., c. 98, Christchurch (Middlesex); 3 Geo. III., c. 53, 46 Geo. III., c. 89, St. Mary (Whitechapel); 14 Geo. III., c. 29; 53 Geo. III., c. 112, St. Leonard (Shoreditch); 6 Geo. III., c. 175, St. Andrew (Holborn), and St. George the Martyr; 14 Geo. III., c. 30, Old Artillery Ground; 20 Geo. III., c. 66, Mile End. By 2 Geo. III., c. 45, the Overseers for the various parishes of Chester were specifically forbidden to make any poor rate other than for the sums ordered by the Incorporated Guardians, nor might they pay away any money except upon the order of three or more Guardians.

[3] See *e.g.*, 32 Geo. III., c. 20, Stone (Staffs.).

[4] See 6 Geo. III., c. 100, St. Andrew (Holborn).

As a rule the amount of the ordinary poor rate, whether it was made by the statutory body directly or, indirectly, by way of precept on the overseers or vestry, was unlimited. But where power to make a special rate for a particular purpose, as, for instance, for the building or purchase of a workhouse, or for the payment of debts already incurred in the administration of the Poor Law, the amount was limited by the statute.[1] The usual method in such cases, however, was to give statutory power to borrow not more than a sum fixed by the Act.[2] In some rare cases the amount of the ordinary poor rate was limited, as, for instance, in the parish of St. Botolph's, Bishopsgate, where assessments for the poor were not to exceed fifteen shillings on any one tenement in any one year.[3] In the Act obtained for the Hundreds of Loes and Wilford it was provided that the amount raised by poor rate was not to exceed the average of the sums raised during the seven years 1753-1760; and this was accompanied by the curious qualification that, if in any of the parishes to which the Act applied, "charity money" had been appropriated against the intention of the donor in relief of the poor's rate, the sums so improperly spent should be added to the legal poor rate assessments for the purposes of calculating the average.[4]

In some cases the Acts provided for the virtual appointment of the overseers by the statutory body. At law the choice of overseers lay entirely with two justices of the peace who could select any "substantial householders" they thought fit to join with the churchwardens in the exercise of the office. In practice either the overseers nominated their successors, the office going

[1] See 19 Geo. II., c. 15, Bethnal Green; 10 Geo. III., c. 79, St. Andrew's (Holborn); 10 Geo. III., c. 80, Saffron Hill, etc.

[2] See 5 Geo. III., c. 97, Loes and Wilford; 6 Geo. III., c. 72, Richmond; 23 Geo. III., c. 54, Birmingham; 29 Geo. III., c. 29, Highworth; 46 Geo. III., c. 44, Buxton, Everingham, etc. The cases are very numerous.

[3] 12 Geo. III., c. 79.

[4] 5 Geo. III., c. 97, Loes and Wilford.

the round of the farmers and other more "important" inhabitants of a rural parish, or, especially in urban parishes where the open vestry was alive, the vestry nominated those thought to be fit for this office of obligation, the justices, in either case, being only too glad to appoint such nominees. In the Act for St. Andrew, Holborn, and St. George the Martyr,[1] and Paddington,[2] the power to nominate persons for appointment as overseers by the justices is definitely conferred upon the statutory Poor Law body.

That this power was not more frequently taken is to be accounted for by the fact that most of these local Poor Law Acts left the overseers with few functions other than the assessment and collection of the rate, even if, as in the cases given above, those functions too were not abstracted and the office left an empty one. In at least two cases the change, however, went much further than this. In two rural parishes of North Wiltshire, Highworth and Aldbourne, provision was taken for the appointment of an officer to be called the Additional Overseer.[3] This officer was to be elected annually by the inhabitants of the parish and others rated to the poor at £5 a year or more, and was to paid a salary of not more than £100 a year. He was to act in "all things appertaining to the office of the overseer of the poor except with regard to the making and collection of the poor's rate and was to have all the powers of an overseer save as excepted above. His admission to the office was to be hedged round by formalities. He was to sign an agreement in the parish book whereby he accepted the office, and he was to take an oath to perform his duties without favour, affection, hatred, or malice to the best of his skill. The control of the Poor Law administration in the parish was to pass to him. For it

[1] 6 Geo. III., c. 100.

[2] 5 Geo. IV., c. 126.

[3] 29 Geo. III., c. 29, Highworth; 39 and 40 Geo. III., c. 48, Aldbourne.

was enacted that, immediately after his appointment, "the whole management and care of the poor shall be vested in him, and neither the churchwardens nor overseers of the poor of the parish shall intermeddle or interfere in the care or management of the poor, either in or out of the workhouse . . . ." One of the churchwardens or overseers, to be approved by the inhabitants in vestry, was to be appointed treasurer for the parish, and the actual collector of the rates was to pay the proceeds over to the treasurer, who was to pay over all such money to the additional overseer as he should require it for the necessary expenses of the poor. All goods purchased for the use of the poor were to be taken to the workhouse, an account of them entered in a book kept for that purpose, they were not to be delivered or disposed of by the workhouse master or mistress to any person without an order in writing from the Additional Overseer, and no churchwarden or overseer was to provide any goods for the use of the poor.[1] In other words, these rural parishes not only had an elected Poor Law authority, but this authority was necessarily to work through an annually elected official, who was to have complete control of executive detail. Under the Manchester Act of 1790 additional overseers could be appointed for that township,[2] but the appointment was optional and not mandatory, was in the hands of the churchwardens and overseers themselves; and, up to 1794 at least, was not exercised.[3] In other cases the statutory Poor Law body was given power to appoint assistant overseers, who were, as a rule, probably intended to be the rate collectors rather than officials of the Aldbourne type; for instance, at Birmingham, assistant overseers could be appointed and *paid by poundage* or otherwise. They were to have such of the

[1] 39 and 40 Geo. III., c. 48.

[2] 30 Geo. III., c. 81.

[3] *A report of the Committee of the Associated Leypayers of the township of Manchester.* Manchester, 1794.

powers of an overseer as might be expressed in the warrant of their appointment.[1] Provision for the appointment of other paid officers, such as workhouse masters and mistresses, clerks, and so forth, are, of course, to be found in the vast majority of these Acts. Indeed, provisions for the payment of elected representatives are not wanting. In the Act providing for the union, for poor law purposes, of Shardlow, Wilne, and other parishes and townships in the counties of Derby, Leicester, and Nottingham, the general supervision of the Poor Law was entrusted to a body of directors elected by the occupiers of land within parishes concerned. But the appointment of officers, the conduct of the workhouse, and, generally, the detailed work of the relief of the poor, was vested in a body of "guardians" consisting of one representative from each parish, again elected by the occupiers within each parish. It was enacted that "every person faithfully and diligently executing the office of guardian shall have, . . . as a remuneration for his care and trouble such sum of money as shall be equal to two and a half per cent. upon the amount of the poor rates for the parish or place for which he shall so serve."[2] Few people, it is probable, would suppose that a precedent for the payment of elected representatives upon a local governing body could be dug up out of an Act relating to a group of midland rural parishes and passed nearly a hundred years ago.

Outdoor relief to paupers generally and not only in respect of children, legitimate or illegitimate, the sick, or the aged, but to the able-bodied, was, of course, customary in England during the eighteenth and early nineteenth centuries, especially after the famous Speenhamland "Act." We find the practice definitely

[1] See 46 Geo. III., c. 44, Birmingham; 1 and 2 Wm. IV., c. 67, Birmingham.

[2] 56 Geo. III., c. 66.

sanctioned in certain local Acts,[1] as, in fact, it had been by general statute.[2] But such clauses were often drawn in terms which seem to suggest that the object of those who promoted the Acts was to reduce and not to increase the amount of relief given outside the workhouse. Such a policy, as will already have been recognised, was in complete accord with the general tenour of those Acts which gave power to the guardians to compel paupers, willy-nilly, to enter the "house." One such clause may here be summarised by way of example. It was a not unusual provision in the Acts that a poor person being refused relief might appeal to one or more justices of the peace, a local re-enactment of the general law.[3] By the St. Pancras Act of 1805[4] it was provided that, if, on a summons to the directors of the poor, issued by a justice, to show cause why any person should not be relieved or admitted to the workhouse of the parish, it appeared that the workhouse was full, that sickness prevailed in it, or that the claimant laboured under some temporary disability and was neither lunatic, nor cripple, nor so generally infirm as to be incapable "in any degree" of earning a living, then the directors at their discretion might relieve such poor person at his own habitation by allowance of money not exceeding five shillings a week and medicines and medical advice so long as might be necessary; but, on production of a medical certificate of good health, a justice might order such relief to cease. Such a provision was obviously intended to confine out relief to exceptional times or cases, and on all ordinary occasions to limit it to the non-able-bodied. In other words, the policy of such a clause as that now quoted was in direct opposition to general

[1] *E.g.*, 6 Geo. III., c. 72, Richmond; 25 Geo. III., c. 41, Richmond; 44 Geo. III., c. 47, St. Pancras; 46 Geo. III., c. 89, St. Mary (Whitechapel).

[2] In 1796 the workhouse "test," established by an Act of 1722, was removed.

[3] See *e.g.*, 46 Geo. III., c. 44. Applying certain Norfolk parishes.

[4] 45 Geo. III., c. 99, St. Pancras.

policy of the justices and overseers which prevailed between 1795 and 1834, and was so vigorously denounced by the Poor Law commissioners.[1]

Such are the main outlines of the typical local Acts of our period which had for their subject matter the relief of the poor. Of course, extraneous matter was sometimes imported into the Acts, a burial ground[2] was to be purchased by the commission or a church to be repaired,[3] or provisions such as were creeping into the ordinary "street" Acts of the period, for preventing nuisances in the vicinity of the workhouse, might be introduced.[4] But apart from such extraneous and exceptional matter we hope to have given above a fairly comprehensive account of the provisions inserted by the eighteenth century legislator into the Poor Law Act of his time.

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[1] Whilst dealing with out-relief it is perhaps worth noting that in some large towns the Poor Law Authority had adopted, doubtless for the purpose of out-relief, a currency of its own. In the Act of 1817, 57 Geo. III., c. 46, which forbade the making and circulation of copper and other tokens, we find it stated: "And whereas certain tokens inside of copper, and bearing the superscription Sheffield Penny Token were issued from time to time during the years 1812, 1813, 1814, 1815, by the Overseers of the Poor of the Township of Sheffield . . . and whereas the immediate suppression of the aforesaid tokens would be attended with great loss to the said Township of Sheffield and to the holders thereof, who are, for the most part labourers and mechanics, as well as with great inconvenience to the inhabitants of the Town of Sheffield and the neighbourhood thereof. . . ." It was therefore enacted that the tokens might circulate until Sep. 25th, 1823, by which time the Overseers were to redeem them. A similar exception was made with regard to Birmingham, though the currency of similar tokens there was to cease by March 25th, 1820.

[2] 14 Geo. III., c. 29, Shoreditch.

[3] 3 Geo. III., c. 53, St. Mary (Whitechapel).

[4] *E.g.*, 45 Geo. III., c. 99, St. Pancras. No common slaughter-house (unless the killing were for butcher's meat), no place for boiling varnish or oil, or carrying on any noxious, infectious, or unwholesome business was to be carried on within a thousand yards of the workhouse, otherwise it might be abated as a common nuisance, damage to existing property being compensated.

VIII

CONCLUSION

This analysis of pre-Victorian local legislation has now been carried up to the proposed limits. Confining ourselves mainly to those Acts concerned with functions which, to-day, form the nucleus of the work of local governing bodies called into existence during the nineteenth century, we have considered how such legislation was advocated in the localities to which it was intended to be applied, the conditions under which it was promoted in Parliament, the constitutional forms which were given to the bodies created by such legislation, and the substance of the powers and duties conferred or imposed upon them. An enormous bulk of the private Bill legislation of the period 1700-1835 we have left undescribed. The hundreds of Turnpike Trust Acts and Inclosure Acts fell outside the scope of our inquiry. But so far as that inquiry has extended what are its results?

In the first place we have to repeat that this mass of legislation represents the first efforts of a community undergoing a very rapid economic development to provide itself with local institutions suitable to its changing industrial organisation.

Mediæval times had seen a country provided with a local political organisation correlated to its social and economic arrangements and at once universal and sufficient. The manorial organisation provided completely for the needs of small self-contained rural communities. The boroughs and their gilds controlled successfully, up to the standard of the times, the affairs of the

comparatively small towns of the Middle Age. As time went on, in country and town, an ecclesiastical organisation, the parish, became ubiquitous; and, as the manor and the borough grew weaker, through changes in the political and economic conditions consequent upon the Renaissance and the great geographical discoveries, recourse was had to this primarily ecclesiastical organisation. The parish and the county became more and more the live units of local administration. Parish administration, reinforced by the supervision of the justices of the peace, and supplemented by the county administration of Quarter Sessions, sufficed for the still elementary local government of early modern times. Such an organisation was enough so long as each man could know his neighbour, and so long as the simple administrative needs of each locality could be satisfied by the personal service, for limited periods in rotation, of particular individuals. It was no longer enough when the eighteenth century witnessed the beginning of the modern process of urbanisation. New functions had to be performed, new service provided. However, even the most rapid social changes when compared with the working life of man and the possible fore-vision of the wisest statesman are relatively lengthy processes. Such changes are at first tentative and local. Neither the subsequent universality of their application nor the form of their later developments can be predicted by those before whose eyes they take place. To-day no statesman can foresee the changed conditions which the new sources of power and new methods of locomotion now coming into use will bring in their train. Similarly with the new conditions of the eighteenth and the early nineteenth centuries. As their final social effects were beyond the power of anyone to foresee, it was impossible to provide for such effects by general legislation. A new local political organisation had to be built up, and it was inevitable, especially in the absence of any adequate contemporary political science, that, if the

organisation was to accompany, *pari passu*, the economic and social development which was its cause, it should be built up piecemeal.

The appropriate political machinery for such a work was at hand. From the magnificent accumulation of legislative device which we call the British Constitution, can always be procured. Just as the elephant can carry the appropriate implement for the moment and the task a great teak log or pick up a pin, so Parliament can pass an Act for paving Little Pedlington as well as an Act of Settlement. The device of private Bill legislation exactly met the case. Those who saw the need for a new body to exercise new functions in their particular locality could petition Parliament to exert its supreme and unlimited legislative powers in their behalf. Private Bill legislation, therefore, changed rapidly from a device for settling estates and dissolving marriages into an instrument for readjusting social conditions; and, indeed, for forwarding the very economic revolution itself. For we must remember that there was not merely a revolution in manufacturing processes, but a revolution in agriculture and in transport; and the Inclosure Acts in the one case, and the Canal Acts, the Turnpike Trusts Acts, and, later, the Railway Acts in the other, were more than an effect of changing conditions; they were the legislative instruments by which the change was accomplished.

The first point, therefore, that we have to notice is this great change in the importance and character of the Acts resulting from private Bill legislation. In the year 1700, twelve public general Acts of Parliament and thirty-six private Acts were passed. Of these, one of the public general Acts and four of the private Acts, or five altogether, were such as would now be classed among local Acts, and all five were the product of private Bill legislation. From about 1703 to 1799 nearly all the Acts we have been considering, in fact practically all the Acts except Inclosure Acts, which we should now

call local, were classified as public general Acts. They were, of course, passed through Parliament by the process of private Bill legislation, but inasmuch as it was convenient that they should be judicially noticed without being specially pleaded and given in evidence, they were always in a final clause declared to be public Acts. Down to 1753 they were printed in the ordinary volume of public general Acts. After that date a majority of them were separately bound in the volumes popularly termed "Road Acts,"[1] though they continued to be numbered consecutively with the Acts of more general application, and they remained, of course, technically and legally public general Acts.

In 1701 only three Acts of a local (as distinguished from a purely private or personal) application were passed; in 1702 there were five; in 1703 only one. Coming to the mid-century, in 1750 nineteen out of a total of forty so-called public Acts were local Acts in our sense of the term; in 1751 the number was twenty-nine out of fifty-nine; and in 1752 a majority of the public general Acts, thirty-four out of sixty, were local Acts. From that time onwards local Acts form a majority of the Acts placed upon the statute book. In 1770 out of 114 general Acts of Parliament forty-nine were really of general application, whilst sixty-five were local Acts; and the next session of Parliament produced 110 public Acts, of which forty-seven were of general application, whilst sixty-three were local. And it must be remembered that in the meantime Inclosure Acts were becoming annually a larger and larger proportion of the private Acts. Thus, whilst it remained true during the whole of our period that private Bill legislation was very largely used as an instrument for arranging the affairs of the landed gentry, it gradually became mainly an instrument for providing the conveniences whether

[1] Because a majority of the Acts contained in such volumes were Turnpike Trust Acts.

roads, bridges, gaols, harbours, or urban street services, which various localities increasingly required, and for creating statutory bodies for these purposes.

This change in the objects for which the political device of private Bill legislation was principally used was bound to react upon the procedure of private Bill legislation itself. So long as the Bills principally dealt with related only to the pecuniary affairs and the arrangements of particular families and to changes of name and nationality, the procedure adopted was not of much public interest or moment. But as the volume of private Bill legislation doubled and redoubled, as it became concerned with the construction of numerous lengthy roads, important and costly canals, the creation of local bodies with power to levy rates, and so forth, questions of the suitability of the procedure in Parliament itself were bound to arise. It is true that the most important changes in private Bill procedure, especially in the House of Commons, fall a little outside our period, and were, probably, mainly the result of imperfections made manifest in connection with the grant of valuable franchises like railway monopolies in the later 'thirties and the earlier 'forties of the nineteenth century. Nevertheless, our period witnesses important changes. Some attempt was made, even in the Commons, to reform the constitution of private Bill committees; fees were revised, the Private Bill Office established, the practice of opposing private Bills in the Second Reading practically dropped; whilst in the Lords the position of the Lord Chairman of Committees was formally recognised and his office converted into a regular, salaried, and, in practice, permanent office; and the Lords' committees were changed into small disinterested bodies of a judicial character. This last step was taken by the Commons at a later date. Thus, though we cannot say that, within our period, all the measures which have to-day removed private Bill legislation, normally, at least, outside the ordinary course of

party politics,[1] were taken, and by this means a fruitful source of political corruption removed, yet substantial and essential changes in this direction had taken place.

The instrument by which the necessary changes in local conditions could be accomplished had been taken from the political armoury and, by use, not only had been polished in appearance, but improved in form, and, therefore, in effectiveness. We have next to ask: What of the changes themselves? In the first place we must notice that these provisions of statutory local administrative bodies were the outcome of a truly English method which we may call voluntaryism, or local particularism, or, if we like the term better, liberty. Peckham, or the parish of St. Andrew's, Holborn, or Marylebone, wanted a watch. The old machinery of watch and ward was not only rusty and ruined, but even had it been capable of refurbishment it would have remained inadequate. These parishes did not wait until, a hundred, or ninety, or sixty years later, the national Government made up its mind that there should be a police system. Each parish applied to Parliament for power to raise a local force and obtained such power. Similarly, a Bristol philanthropist advocated the creation of workhouses. There was no pause until the country and the statesmen who governed it were convinced that workhouses were desirable institutions and should be universally provided. One parish after another applied where necessary for power to purchase land and erect, govern, and maintain such an institution, regardless of whether other parishes did or did not undertake like obligations. The inhabitants of St. James's Square or Lincoln's Inn Fields decided that the immediate neighbourhood of their residences should be lighted, paved, and adorned, and they petitioned Parliament for, and obtained, power so to do, and to rate themselves for such purposes. Parishes desired to improve (or, perhaps,

[1] See Lowell, *The Government of England*, I. 391.

more generally, to cheapen) the administration of the Poor Law. In spite of the existence of a uniform and ubiquitous system based upon a statute of general application they nevertheless asked Parliament for Acts, applying to their particular neighbourhoods only, which took away the control of the Poor Law from the churchwardens and overseers of the poor, supervised by the local justices of the peace, and placed it in the hands of a body of governors or directors or guardians of the poor. In other districts, parishes thought it good to unite for Poor Law purposes in order to secure, by a wider distribution of standing charges, a more economical administration, and by establishing a large, well-managed house of industry in place of a poky, ill-disciplined parochial workhouse, at once to reform the poor and make a profit from their labour. They did not wait, therefore, for Gilbert's Act, which made unions of parishes at least possible everywhere, still less for the reformed Poor Law which made such unions the rule, but applied for powers to form their own union. So, as the old towns increased in size, and villages grew rapidly into urban centres of industry, each town applied, if and when it thought fit, for an Act which allowed it to light, watch, pave, cleanse, and prevent nuisances in its streets, establish, enlarge, or transfer its market, or perform for itself some of these or some other functions which the inhabitants, or often only an influential minority of them judged to be desirable.

Thus, all over the country there sprang up bodies possessing different powers, and each one probably differing from every other in the details of its functions, if not, as was often the case, in their substance.

The powers differed from town to town and so did the mode of their exercise. Further, as we have sufficiently pointed out, the statutory bodies created differed even more in structure than they did in function. They might be elective, and if so the franchise upon which they were elected might differ from the

widest and most democratic to the narrowest and most restricted. Or the body might be composed of a number of persons named in the Act itself by those promoting it, the body so nominated filling the vacancies by co-option of all kinds at every variety of interval. Or, again, the body might be formed by a combination of the co-optive with the elective principle. It might be mainly an *ex-officio* body, and the *ex-officio* principle might be combined with either the elective or the co-optive or both, and this in many different modes and degrees. Several such bodies, constituted in different ways and exercising separate functions might co-exist in the same parish or town. Again, one place might have a statutory body or statutory bodies exercising all the functions which, during our period, were commonly exercised within its limits. A neighbouring town or parish might be entirely without a local statutory body of any description; and between these two extremes all the possible variations existed. Thus we may fairly say the heterogeneity both in structure and function was the mark of the bodies created in the manner we have described, and this, together with the lack of universality in the provision of such functions and of the bodies exercising them was the natural outcome of the method of creating them which the English constitution allowed and encouraged. The provision for the exercise of these functions was obtained as the answer to a petition for an exception to or a privilege above the ordinary law of the land. The general law recognised no need for any universal means of providing paving, lighting, watching, cleansing, the suppression of nuisances, the removal of obstruction, or the supply of other urban street necessities, the construction of harbours, or new bridges, or new roads, beyond the ancient method of enforcing the fulfilment of certain personal services. If men kept watch and ward as they should do, if they cleansed the road before their own habitation as was their duty, if the mayor's court, or the court of the

manor which had developed into a borough, exercised its powers to prevent nuisances, the town affairs would run smoothly. In the rural districts (and most districts outside corporate towns may be assumed to have been rural) if a constable were properly appointed, if statute duty on the parish roads were duly performed, if nuisances were presented, if the overseers were duly appointed and fulfilled their legal obligations, then there would be peace and cleanliness, destitution would be duly relieved; and each parish fulfilling its road-making duties, and the county attending to its ancient obligations to keep bridges in repair, communication by road would be sufficiently provided for. The assumption, as far as local government was concerned, was that the England of the Georges was still the England of the Tudors, and that, for local affairs, personal service, easily enforced in little towns and villages where each man met his neighbour daily and where an ancient machinery of urban parochial and county government still, partly at least, feudal in its organisation, existed for the enforcement of such service, was sufficient. Thus, no general law to meet a new state of things, which was growing up, but not grown, seemed to be necessary; nor was the need to replace institutions, obsolescent, but not quite obsolete, felt, because their inadequacy was not realised. Therefore, the particular provision for the exceptional circumstances of particular places might be allowed, and even encouraged. The King had anciently referred petitions of grievance where legislation seemed necessary to his Parliament, just as he had referred petitions of grievance where the remedy seemed a wider and more generous interpretation of the law or its forms to his Chancellor. This old method was still available. Manchester, or some adjoining parish, therefore, might petition for power to remedy the grievance that its streets were unpaved or unlighted or unwatched just as a country squire or a peer of the realm might petition concerning the grievance that, by the general law, he

could not bind the succession of his estate for as long a period as he wished, or that his predecessor had so tightly bound the succession, which was now his, as to prevent a disposal of the lands he held for life to his own advantage and his heirs'. In neither case was there any need to change the general law, and to grant such privileges to all. To deal with the particular case as it arose was the wise and sufficient, if insular, method; and, ready to hand, was the device of private Bill legislation, ancient in origin, flexible and rapid, if somewhat expensive, in operation. It followed that, if the creation of local bodies was an answer to the petition of those by whom the law, or the absence of law, was a grievance, so far as possible the desires of the petitioner should be granted in the mode desired. Heterogeneity in statutory bodies created by this method, and lack of geographical universality in their occurrence, was thus the normal outcome of the legislative method by which they were created.

A further outcome of this individualism in application and in grant was the creation of the so-called *ad hoc* or " separate function " bodies. The localities did not feel any need for some body with a general power of local government; in fact, the idea of *government* probably never occurred to them at all. What they needed was the provision of a particular service. The body created, therefore, was given power to supply, in one way or another, a particular service or group of services, and the idea of economical and co-ordinated provision of all common local services by a single body was only gradually forced by experience upon a none too prescient nation, just as was the conception of a graded and ubiquitous series of local bodies, one only for each locality, one in every locality.

Nevertheless, out of this heterogeneity in structure and function of the bodies created, and out of what, awkwardly but intelligently, may be called their sporadicity, there began to emerge something like

homogeneity and universality, even before our period had ended. We may detect four influences at work in this direction: (1) The tendency of one place to imitate its neighbours; (2) the tendency of private Bill Committees and the officials connected with the process of private Bill legislation, especially the Lord Chairman, to encourage and even insist upon some uniformity among private Bills of any given kind; (3) the development, probably principally through the last-mentioned channel, of Standing Orders as to clauses, and the further development of these into "clause Acts"; (4) the provision of general legislation of an adoptive or a compulsory character. To write the history of the manner in which, and the extent to which, these influences were exerted would be to write a complete history of English local government in the nineteenth century. All we can here attempt to do is to note the beginnings of a process which is still far from complete.

(1) In the first place the success of one locality in providing itself with certain services by means of private Bill legislation was a very good reason for its neighbours imitating it. Thus one London parish tended to follow the example of another in providing a watch, in paving, lighting, and cleansing, in obtaining a better Poor Law administration, and the like. So when Manchester and Salford jointly or severally obtain local Acts, their example is imitated by the adjoining and indeed almost indistinguishable neighbourhoods of Chorlton-on-Medlock, Hulme, Ardwick, and so on. Similarly, the action of Birmingham produces action in Deritend and Bordesley, Plymouth is imitated by Plymouth Dock (Devonport), in Rochester, Strood, and Chatham example is contagious. So with rural parishes. One set of Norfolk or Suffolk parishes forms itself into a union and provides a House of Industry, and the example induces similar action on the part of neighbouring groups; the example of Shrewsbury in the same matter spreads out into Shropshire and the Welsh

border. So in Poor Law administration we find Wiltshire villages like Aldbourne and Highworth imitating one another's legislative action. Thus bodies of a particular type for particular functions tend to be scattered over the country in patches, the whole area being symbolised by a patch-work quilt having large white patches (the areas of no legislation) with scattered blobs of various colours intervening. For this reason, and because various common forms came to be settled on by the small and experienced group of solicitors who promoted the Bills, and gradually came to know what would, and what would not, pass, a certain amount of similarity is to be seen in legislation, especially for neighbouring places, and not infrequently for widely separated places.

(2) Secondly, it was to be expected that very novel clauses would be noticed in Parliament, though in the case of unopposed Bills we can easily over-estimate the rigidity of Parliamentary scrutiny during the period. But as time went on, and especially as the Lord Chairman, whilst still an unsalaried, but practically permanent dignitary, gained power, it became well known that certain clauses were essential to a particular type of Bill, and, in some cases, one or both of the Houses of Parliament insisted by Standing Order upon the insertion of particular clauses.[1] During a large portion of our period, however, such necessary clauses had to be enacted in Act after Act at enormous and unnecessary length. The adoption of the device of "clauses Acts," which could be incorporated by the insertion of a few words into every Act, comes a little outside our period.

(3) Again, when the desirability of some more general provision has been established, or, in rare cases, even before that complete recognition, an Act may be passed

[1] See *supra*, p. 64. Standing Orders were primarily used merely to secure that parties whose rights might be effected should have notice. Their development into an instrument for securing uniformity is a secondary development.

enabling any parish or town or other unit to provide itself with some service, exercise some power, or erect some constitution, by adopting an Act of Parliament instead of promoting one. The Act which enabled Quarter Sessions to cause market towns to be scavenged[1] is a case where, perhaps owing to the influence of some particular legislator, Parliament proceeded rather faster than the localities. In this case no formal adoption had to take place. The provisions of the Act had been merely to be put into force. But instances of adoptive Acts being passed after their contents had, as it were, been proved by the experience of particular localities were Gilbert's Act,[2] enabling parishes to form themselves into unions; Michael Angelo Taylor's Act,[3] enabling metropolitan parishes to provide themselves with street services and to suppress nuisances and abate obstructions and encroachments, and the Lighting and Watching Act of 1830.[4] The power to enable, and indeed to compel, each locality to provide itself with sanitation was not to come until 1848, and even then was not to apply to the metropolis. Of another type were the Acts which were to apply to all local Acts and to be incorporated into them without any option on the part of promoters. The two principal Acts of this type, however, apply to legislation which we have not particularly described, the General Turnpike Act of 1773[5] and the General Inclosure Act of 1801.[6] These Acts were passed to serve a double purpose: to secure efficiency, and if not adequacy and justice, at least uniformity in local Acts of a particular type, and therefore in the services supplied by their instrumentality, as well as to reduce the cost of Bill promotion. Nevertheless,

[1] See p. 199.
[2] 22 Geo. III., c. 83.
[3] 57 Geo. III., c. 29.
[4] 1 Wm. IV., c.
[5] 13 Geo. III., c. 78.
[6] 41 Geo. III., c. 109.

though there was not much legislation of this kind made applicable before 1835 to what are now the commoner functions of local government, the Acts instanced above indicate one line along which the tendency to homogeneity and universality was to work itself out.

Finally the full signficance of the legislation we have described will not be appreciated unless we note that it forms the initial stages of the process whereby the citizens of our country have begun to supply themselves co-operatively with services which from time to time they deem necessary to a civilised life or expedient in a rational social economy. The local Acts we have described not only show heterogeneity in both constitutional structures erected and the services provided for proceeding by slow degrees towards some degree of homogeneity and universality, but they mark the beginnings of the progress from a period of individualism to a period of co-operation, or, if the term be better liked, collectivism, with regard to the supply of many services. In the beginnings, paving, or lighting, or cleansing is a function to be performed by individuals and only by certain individuals. The next stage is that these services are made commutable by the individuals liable to them for a money payment. Long before our period closes, in most considerable towns outside London which obtained a local street Act at all, the service is taken over by the community as a whole, because it is for the benefit of the community as a whole, and a rate to pay for it is levied on all occupiers or owners, whether or not their property happens to be so situated (*e.g.*, to front upon a street) as to make its chargeability seem peculiarly appropriate. In London, and in some other places, the tendency to regard these matters as a service required by certain individuals, as a benefit to certain occupiers or some other *sections* of the community, tended to persist. Sometimes certain streets were not included in the area of an Act, because inhabitants wanted

no street lighting, required no pavement, and therefore *should* not pay. Certain streets might be excluded from services, and the obligation to pay for them because the inhabitants were poor and *could* not pay. Or again, there was a kind of local particularism. The unit of service was not the whole community, but some part of it wishing for some amenity. The inhabitants of a square, or the occupiers of house property erected upon a particular estate, wished to supply themselves with light, with paving, and with machinery for removing and preventing nuisances. They co-operated and agreed to be rated for these purposes. This was quite a natural and a proper attitude, at any rate for that time. Indeed, it was a communal attitude, a recognition that for such affairs the individual human being was powerless and that the only way was through co-operation by a group. But the group was small, was of a single social class; it was *exclusive* of most of the members of some larger historical community composed of men and women of all degrees of social position and economic standing. In a sense, therefore, the action, though co-operative and communal, when looked at from within the group, was individual, exclusive, and anti-social when looked at from without.

This spirit was only possible or likely, at least as regards street services, in areas which, though economically one by the beginning of the nineteenth century, were not bound together by the existence of some historic political or ecclesiastical unity. London is to-day a unit of only imperfect solidarity. The London area of a hundred or more years ago was but a congery of parishes, some of them mere villages, growing into each other. Each unit was, therefore, likely to act for itself. Any other form of action was almost, if not quite, impracticable. In fact, where a whole parish was the area of the statutory body and where all portions of that parish enjoyed the service the body was created to supply, the unit was, socially, as

complete as it could then, in most cases, be made. However, in some cases of large parishes in which the process of "development" was under way, we find the unit not the parish, but the estate. St. Pancras is the best example. The only purpose of local government for which it was a single undivided unit down to 1855 was the Poor Law. For the ordinary street services the ground had been covered, bit by bit, by the various bodies of street or improvement commissioners, created by local Act, for the Doughty Estate, the Foundling Estate, the Calthorpe Estate, and so forth.[1] Not until 1855 was the parish in London made the invariable unit of the ordinary local administration of the time. In provincial cities like Bristol or Norwich or Exeter, where parishes were small and numerous, a similar particularism, having tiny parishes for its unit or organisation, was sometimes seen, and, in the north of England, where the parish was very large, the townships which made up the parish were often the areas over each of which separate statutory bodies ruled. Such units, being less than the communities of which, by process of time, they had become but arbitrarily selected parts, could not be the basis of any lasting system of provision for common needs out of common funds. As time went on and it was found expedient to provide services in that fashion the tendency has been to arrange the communities in areas comprising the whole population, grouped, by one force or another, around some common centre, the group thus being truly comprehensive and social. And, as the energy and earning capacity and the social outlook of the individuals composing the group have enlarged, so too have the desire and the capacity of the community, where practicable and expedient, to provide services for the community, though its local governing machinery, and often at the common cost, increased.

The nineteenth century, then, has developed a local

[1] There were nineteen such bodies in 1855.

government out of the eighteenth century conditions in three ways: (1) By the consolidation of local governing bodies into a single graded series, a process which, if the administration of the Poor Law were united with the ordinary municipal administration, would practically be complete. (2) By the enlargement of areas, broadly speaking, in such a way as to arrange under a single governing authority a population of all social grades bound together as a rule by some economic, geographical, or historic tie or some or all of these. This process is not complete, and in a progressive state can only approximately be complete at any given moment, no arrangement ever being final. (3) These bodies form the machinery whereby certain needs are supplied, and often paid for, co-operatively, and, as far as the payment goes, compulsorily. The most common municipal services are not now regarded as rendered to individuals or even to sections of a community and to be paid for, on a *quid pro quo* theory, only by those to whom they are rendered. All the services we have chiefly been concerned with—the paving, lighting, watching, cleansing, and removal of nuisances—are now as distinctly communal as is the provision of roads. This development has not been the result of the conscious adoption by any considerable section of the population of any new theory, at least until quite recently. It is the result of rule of thumb, of the method of trial and error. New services involving the creation of new authorities were urgently required in a rapidly developing community. The authorities were constructed and the services rendered, as those who desired them thought best, from a strictly practical point of view. The system so erected was based upon one set of principles. Experience, and very little else, has driven us gradually to construct a nearly coherent, and almost universal system based upon the opposite set of principles. How far that progress will be carried, and particularly how far the community will carry the idea of collective provision, it

is no part of our task to predict. But, whilst our forefathers groped their way, driven by the necessity of maintaining civilisation under urban conditions which to them were novel—and have, indeed, probably never been paralleled in the history of mankind—it is our business to consider whether we may not save some time and trouble in the forward path by using such light as political science can supply.

APPENDIX

The following letter to *The Times* of June 24th, 1911, is printed by the courteous permission of Mr. Edmund Gosse, the Librarian of the House of Lords :

THE CHAIRMAN OF COMMITTEES IN THE LORDS.

To the Editor of *The Times*.

Sir,—The recent appointment of the Earl of Donoughmore to the responsible and arduous office which, as every one regrets, the Earl of Onslow has found himself obliged to resign, has led to a considerable amount of inquiry as to the history of the Chairmanship of Committees in the House of Lords. So far as I am aware, no published sources give information on this matter, and I therefore ask your leave to put on record what I have been able to collect from the documents of the House. So important is the office, and so wide-reaching the duties of the Chairman of Committees, that a brief history of the arrangements which have culminated in this appointment may be held worthy to be recorded.

Until the middle of the eighteenth century the business of the Committees of this House seems to have been managed with great irregularity. So far as can be traced from the Journals, each of the Committees, and they were numerous, had its own fixed Chairman, but for convenience one often acted in the place of another. Among these Chairmen Lord Willoughby of Parham was the first who took the lead. He held a position of undefined prominence, and continued to hold it for many years, but he did so, not as a peer, but as an officer of the House. This extraordinary circumstance seems to be proved from the fact that it was not until 1765 that Lord Willoughby of Parham, whose peerage had been in abeyance, claimed his seat, and that it was not until March, 1767, that he was allowed to take it, by a resolution of the House. Yet from 1760, if not earlier, he had been acting as the chief Chairman of the Lords' Committees, and had regularly reported to the House. Lord Willoughby was occasionally (but systematically) replaced, I suppose in his absence, by the first Lord Sandys of Ombersley, who had

been since 1756 "Speaker of the House of Lords." Other Chairmen of Committees (in 1761-5) were Lord Delamer and the Earl of Marchmont. The activities of all these peers ran parallel, and their reports were sometimes simultaneous. It is remarkable that from the date in 1767 when Lord Willoughby was permitted to take his seat, his name ceases to appear as that of a Chairman of Committees, and his place is taken by Lord Sandys. That nobleman died in 1770, and was succeeded in office by the first Lord Boston.

On February 9th, 1775, we meet for the first time, in the capacity of Chairman of Committees, with the name of Lord Scarsdale. "The Lord Scarsdale (according to Order) reported the amendments made by the Committee of the whole House, etc." This was his lordship's first appearance in that capacity. In fact, Lord Boston, seized with fatal illness, had no doubt resigned. His latest appearance in the House had been on January 20th, 1775; on March 30th he died.

Lord Scarsdale's name, from this time forth, appears incessantly in the Journals. He must have been a most assiduous attendant on the business of the House. But on February 2nd, 1778, the Order of the Day having been read for taking into consideration the state of the nation, it was proposed that the Duke of Portland should be the Chairman of a Committee to report on that subject, independently of Lord Scarsdale.

The Duke being in violent opposition, this suggestion was ill-received. After a debate the question was resolved in the negative. It was then proposed and carried that Lord Scarsdale should be the Chairman of this Committee, as, no doubt, according to the new procedure of business, he would have mechanically been.

Up to this time, when something like a formal appointment seems to be indicated, it is almost certain that the Chairman of Committees was appointed by the House itself, whether to act on Committees of the whole House or on Select Committees. No doubt there had always been certain peers, whose aptitude for business and whose leisure were marked, upon whom the choice naturally and informally devolved. But not a greater formality was held to have become convenient.

After this time we hear no more, or little more, of coadjutor-Chairmen, but Lord Scarsdale seems to exercise all the duties which now devolve upon the Earl of Donoughmore. The title and office of Chairman of Committees, however, did not yet exist. On March 24th, 1790, Lord

Scarsdale abruptly makes way for Lord Cathcart, who henceforward reports from all of the Committees. Lord Scarsdale still attended the meetings of the House, but it is evident that he had resigned his office of Chairman. Lord Cathcart is henceforward styled "Chairman of the Committees of the House," and he is the earliest of the direct line of Lord Donoughmore's predecessors. He held the office until 1794, when he was succeeded (strangely enough!) by the Bishop of Bangor. This was John Warren, who occupied the post until his death, on January 27th, 1800. Lord Walsingham, who had been joined with the Bishop in some of the duties, continued them provisionally for six months, but on July 23rd a resolution was passed, "that this House will, at the commencement of every Session, proceed to nominate a Chairman of Committees of this House." Since that resolution the lord so nominated has taken the chair in all Committees of the whole House, and in all Committees upon unopposed Private Bills, unless otherwise directed by the House. In the case of Select Committees on opposed Private Bills and other matters the House generally directs that the Committee shall choose its own Chairman.

It was on the death of the Bishop of Bangor, on January 27th, 1800, that it was resolved in future to pay a fixed annual salary to the Chairman of Committees. Lord Walsingham thereupon took the chair, and when he retired, in 1814, it was with a pension of £2,000 a year.

The subsequent Chairmen of Committees have not been many. You will perhaps allow me to complete this brief statement with a list of them. The Earl of Shaftesbury, 1814 to 1851; Lord Redesdale, 1851 to 1886; the Duke of Buckingham, 1886 to 1889; the Earl of Morley, 1889 to 1905; the Earl of Onslow, 1905 to 1911. The Earl of Donoughmore, who assumes the office under conditions of such gravity and so great stress of business, completes the tale.—I am, Sir, your obedient servant,

EDMUND GOSSE.

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